KEY TO BRIEFS

1 Motion for Leave to File Complaint, Complaint and Brief in Support of Motion

2 Opposition to Motion for Leave to File Complaint Against the State of Louisiana, and Brief in Support of Opposition

3 Memorandum for the United States in Reply to Louisiana's Brief in Opposition to Motion for Leave to File Complaint

4 Motion for Injunction and Brief in Support of Motion

5 Memorandum for the United States on Maintenance of Status Quo

6 Motion to Dismiss, and Defendant's Opposition to Plaintiff's Motion for Injunction, with Supporting Brief

7 Motion to Dismiss on Jurisdictional Grounds

8 Motion for Entry of Default and for Leave to Proceed ex parte and Brief in Support of Motion

9 Brief for the United States in Opposition to Defendant's Motion to Dismiss on Jurisdictional Grounds

10 Reply Brief of the State of Louisiana on Motion to Dismiss on Jurisdictional Grounds

11 Opposition to Plaintiff's Motion for Entry of Default and for Leave to Proceed ex parte and Supporting Brief

12 Application by Anderson-Prichard Oil Corporation, Lessee of Both Parties, for Extraordinary Relief and for Amendment or Interpretation of Decree

13 Brief in Support of Application by Anderson-Prichard Oil Corporation, Lessee of Both Parties, for Extraordinary Relief and for Amendment or Interpretation of Decree

14 Motion to Dismiss as Moot Application of Anderson-Prichard Oil Corporation for Extraordinary Relief and for Amendment or Interpretation of Decree and Memorandum in Support of Motion

15 Answer of the State of Louisiana

16 Motion by the State of Louisiana to Take Depositions

17 Motion for Judgment and Statement with Respect to Motion

18 Memorandum for the United States in Opposition to Motion by the State of Louisiana to take Depositions

19 Reply to the Motion for Judgment and to the Opposition of the United States to Louisiana's Motion to Take Depositions

20 Motion for Leave to File Intervention, Brief in Support of Motion, and Intervenors' Answer

21 Brief for the United States in Support of Motion for Judgment

22 Memorandum for the United States in Opposition to the Motion of the Parishes of St. Bernard, Plaquemines, Jefferson, Iberia and St. Mary for Leave to File Intervention

23 Memorandum for Intervenors in Answer to Opposition Memorandum by the United States

24 Brief of the State of Louisiana in Opposition to Motion for Judgment by the United States

25 Appendix to Brief on Behalf of the State of Louisiana

26 Motion for Reconsideration of Order Denying Right of Intervention, and Supporting Brief in Answer to U.S. Brief for Judgment

27 Reply of the State of Louisiana to Brief of the United States on Motion for Judgment

28 Brief for the United States in Reply to Louisiana's Opposition to Motion for Judgment, and in Opposition to Louisiana's Motion to Take Depositions

29 Memorandum for the United States Regarding the Motion of the State of Texas for Leave to File a Brief as Amicus Curiae

30 Motion for Leave to File and Brief of the State of Texas, Amicus Curiae

31 Memorandum for the State of Louisiana Regarding the Motion of the State of Texas for Leave to File a Brief as Amicus Curiae, and the Memorandum by the United States in Response Thereto

32 Intervention of the State of Alabama with Supporting Brief

33 Amended Complaint and Statement with Respect to Amended Complaint

34 Separate Answer of the State of Mississippi to Amended Complaint

35 Answer of Defendant the State of Texas to Second Cause of Action

36 Defenses to Amended Complaint

37 Answer of the State of Louisiana to the Amended Complaint

38 Motion for Pretrial Conference and Statement in Support of Motion

39 Answer and Cross-Bill of State of Alabama to Amended Complaint

40 Motions for Judgment and for Dismissal of Cross-Bill Filed by the State of Alabama, and Memorandum in Support of Motions and in Response to Defendants' Motion for Pretrial Conference

41 Answer of the State of Texas to the Motion of the U.S. for Judgment; Motion for Leave to Take Evidence; Motion for Severance and for Separate Trial and Argument; and Statement in Support of Motions and in Reply to Response of the U.S. to Motion for Pretrial Conference

42 Answer of the State of Florida to the Motion of the U.S. for Judgment; Motion for Leave to Take Evidence; and Statement in Support of Motions and in Reply to Response of the United States to Motion for Pretrial Conference

43 Answer of the State of Louisiana to the Motion of the United States for Judgment

44 Answer of Alabama to Motion of United States for Judgment and Motion to Dismiss Cross-Bill

45 Answer of the State of Mississippi to the Motion of the U.S. for Judgment; Motion for Leave to Take Evidence; and Statement in Support of Answer and Motion

46 Memorandum for the United States in Opposition to Motions for Leave to Take Evidence and for Severance

47 Joint Memorandum of the States of Louisiana, Texas, Mississippi, Alabama, and Florida Pertaining to Schedule for Filing of Briefs and Order of and Allotment of Time for Oral Argument

48 Brief for the United States in Support of Motion for Judgment on Amended Complaint

49 Brief for the State of Alabama in Opposition to Motion for Judgment on Amended Complaint

50 Joint Brief for the Defendant States on Common Questions

51 Brief of the State of Texas

N.B. No "Key" numbers will be assigned to briefs filed after August 13, 1953. They shall be introduced by title targets.

and further provides that nothing in that section is to be construed as questioning or in any manner prejudicing

> "the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

Congress, of course, has the power to provide its own measure of its disposition of property of the United States and in that connection to make its own definition of terms which it uses in a law carrying out that purpose. In the Submerged Lands Act, Congress gives its own definiton of the term "boundaries". It chose to measure its transfer by the historic "boundaries" of the States, and gave "boundaries" a special definition.

Subject to the limitaton that the area of the transfer to the States would not extend beyond three marine leagues from the coast, the boundaries of a State in the Gulf of Mexico, for the purpose of this Act, are defined to be the State's boundaries either (a) as they existed at the time the State became a member of the Union, or (b) as "heretofore approved by Congress."

It is provided in Section 2 that the boundaries may be such as are extended or confirmed pursuant to Section 4 of the Act. Section 4 does not in itself confirm or extend boundaries beyond three geographical miles. However, by saying that "nothing in this section is to be construed as questioning . . .

the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress," the Congress recognizes the existence of State boundaries beyond three miles if such boundaries had been approved by Congress before the passage of the Submerged Lands Act, or if such boundaries were so declared in the State's constitution or laws prior to or at the time of its admission to the Union. Here is an explanaion of what Congress meant by the word "existed" in Sec. 2(b) and how such existence is to be shown. In other words, Section 4 provides a clarification of the meaning of a State's boundaries "as they existed at the time such State became a member of the Union" by showing that Congress intended that a State's boundaries should be regarded as having then existed "beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union . . ."

2. *The legislative history of the Submerged Lands Act.*

(a) *The purpose of Congress was to transfer rights to the States based on historic State boundaries in the Gulf of Mexico.*

The legislative history of the Submerged Lands Act, as well as its own words, makes it perfectly clear that Congress never intended that the rights of the Gulf Coast States should be limited to a line of

three miles from the coast as the Government argues. If it had so intended, it could easily have so provided by eliminating all provisons of the Act relating to historic boundaries of the Gulf Coast States extending more than three geographical miles from the coast. The inclusion of these provisions was by deliberate choice of Congress.

Senator Cordon, who presided at the hearing before the Senate Interior Committee on Senate Joint Resolution 13, summarized the three ways of measuring the outer limits of the transfer of rights in the Act as follows: (99 Cong. Rec. 2620)

> "The philosophy of the joint resolution is limited to [1] the areas of the States as they were when the States came into the Union, or [2] as that area was thereafter approved by Congress or [3] to an area 3 miles from their coastline." (Numbers in brackets inserted.)

Throughout the Committee Hearings and the debate in both Houses of Congress it was explained by the sponsors of the legislation and recognized by its opponents that one of its purposes was to "confirm" title in the States, as the title provides (67 Stat. 29), and to declare it to be in the public interest that the rights of the States be "recognized" and "confirmed," as is provided in Section 3, paragraph (a). (67 Stat. 30, 43 U. S. C. Supp. V, 1311) In other words, while the Act is an exercise by the Congress of its rights to dispose of property belonging to the United States, one of the reasons for the disposition made by the Congress in this Act is the desire of Congress to recognize and confirm, by the

transfer it makes to the States bordering on the Gulf of Mexico, rights historically asserted and exercised in good faith by the Gulf States over a long period of years to the area extending to the States' historic boundaries into the Gulf of Mexico.

As this Court held in *Alabama vs. Texas*, 347 U. S. 272, the power of Congress to dispose of property belonging to the United States is "without limitation" and the motives and reasons which may cause the Congress to measure the transfer of property rights in one way in some instances and in a different way in others are matters that are for Congress in its unlimited discretion to decide. Throughout the hearings and the debates, the sponsors of this legislation made it plain that one of the purposes of the Act was to give recognition to these rights and equities of the States bordering on the Gulf of Mexico and to measure the transfer of rights to them on the basis of their "historic," or "traditional," or "original" boundaries.

Referring to the decisions of this Court in the California, Texas and Louisiana cases, Congresswoman Thompson of Michigan gave the following reasons why the House Committee decided to recommend legislation transferring rights to the historical boundaries of the respective States: (99 Cong. Rec. 2505)

> "But that Court also recognized in its opinion the right of Congress to determine, as a matter of policy, rather than a matter of law, whether or not continued Federal control is for our best interest. In view of our present world-wide

crisis, and the increasing need for petroleum in our own defense program, we, of the committee, many of our colleagues, and members of the Cabinet believe that our Nation's interests would best be served by restoring to the various States the coastal offshore lands to the *historical boundaries of the respective States.*" (Emphasis added)

In explaining the purpose of Senate Joint Resolution 13, its sponsor, Senator Holland, stated at the beginning of the hearings of the Senate Interior Committee that the purpose of the Resolution was to restore title and ownership of land beneath navigable waters to the States "within *traditional* State boundaries." (Senate Interior Committee Hearing on S. J. Res. 13, 83rd Cong. 1st Sess., 32) (Emphasis added)

Senator Daniel, another sponsor of the resolution, made a similar statement: (*Id.*, 326)

"The Holland Bill covers all of the portion of the Continental Shelf lying within *original historic* State boundaries." (Emphasis added)

At another point in the hearing, Senator Daniel made the following statement: (*Id.*, 206)

"The Holland Bill simply recognizes *the long-established good-faith claims* of all of the 48 States and establishes, confirms and restores to every State in the Union the ownership and control of all of this type of property located in their respective *historic* boundaries." (Emphasis added)

The report of the Senate Committee (S. Rept. No. 133, 83rd Cong., 1st Sess., 10) in explaining the effect of Section 3 of the Act says:

> "Section 3(a)(1) provides that the rights of ownership of lands and natural resources beneath navigable waters within the *historic* boundaries of the respective States are vested in and assigned to the States . . ." (Emphasis added)

Throughout the debate in the Senate, it was made clear by the sponsors of the resolution, in referring to specific Gulf States, that the purpose of the resolution was to "recognize" and "confirm" and "vest" and "establish" in the States property rights within the "historic" boundaries of the States as they had asserted them. For example, Senator Daniel stated, as one of the sponsors of the resolution, that he insisted that the resolution would transfer property rights to Texas out to the boundary which it had asserted in 1836, when it was an independent republic: (99 Cong. Rec. 2620)

> "So 3 leagues from shore is the boundary Texas has always had since 1836. That was the boundary claimed by Texas at the time Texas entered the Union, and it is the boundary which Texas insists applies in the consideration of the question pending before the Senate today."

On questioning by Senator Douglas, Senator Daniel made the further statement regarding the

purpose of the resolution as applied to the transfer of property to Texas: (99 Cong. Rec. 2695-2696)

> "Mr. Douglas. Does the Senator from Texas believe that the Resolution affirmatively gives to Texas the right to claim title and ownership out to 3 leagues or 10½ miles?
>
> "Mr. Daniel. The Senator from Texas very definitely believes that the Resolution gives the State of Texas the ownership and title out to the boundaries of the State of Texas *as they existed at the time the Republic of Texas came into the Union as a State, which boundaries were, of course, three leagues,* and were so recognized then and have thereafter been recognized by the United States Government." (Emphasis added)

Senator Douglas also questioned Senator Holland with reference to the effect of the bill as to the proprietary rights to be transferred to Florida on its west or Gulf Coast: (99 Cong. Rec. 2755)

> "Mr. Douglas. Is it the contention of Florida that Senate Joint Resolution 13, as applied to the facts in Florida's case, transfers title and ownership of submerged lands, and the right to administer them out 10½ miles on Florida's west coast?
>
> "Mr. Holland: The Senator is correct as to all the proprietary rights covered by the resolution, and always excepting those rights which are necessary for the Federal Government to enforce completely its jurisdiction as to control of navigation, commerce, international affairs, and the common defense."

(b) *Congress rejected a limitation to the three-mile line.*

IN THE SENATE

While Senate Joint Resolution 13 was pending in the Senate, Senator Anderson of New Mexico offered a substitute which would have limited the transfer of all rights to three miles from the coast. Section 18 of the Anderson substitute provided in part as follows: (99 Cong. Rec. 2907, 3956)

> "(e) the term 'seaward boundary of a State' means a line 3 nautical miles seaward from the points on the coast of a State at which the submerged lands of the Continental Shelf begin; . . ."

In speaking in opposition to a motion to table his substitute, and in contrasting his substitute with the Holland resolution, Senator Anderson said: (99 Cong. Rec. 3951)

> "I call attention to the fact that my substitute which it is attempted to put into the grave, does try to follow the 3-mile limit to which the Attorney General has referred, whereas the Holland resolution does not do so. Instead, the joint resolution sets a line as far as 10½ miles off the shore."

The Anderson substitute which would have placed in the Act the very limit for which the Government now contends, of three miles from the coast, was thoroughly debated in the Senate. Senator Anderson made in substance the same arguments in

support of his substitute and against the Holland resolution that the Government makes in its Brief regarding the alleged controlling effect of the position of the Secretary of State on the 3-mile limit.* At the conclusion of full debate, the Senate tabled the Anderson substitute by a vote of 56 to 33, with 7 not voting. (99 Cong. Rec. 3956-3957) The choice was clearly presented to the Senate, and the majority voted in favor of the resolution which would provide for a transfer to the Gulf States to three leagues, and refused to limit the transfer to three miles.

Two other efforts were made in the Senate to limit the transfer to the States to 3 miles from the coast. On April 28, 1953, Senator Monroney submitted amendments to Senate Joint Resolution 13. (99 Cong. Rec. 4069) On the following day, Senator Monroney stated as the first objective of his amendments: (99 Cong. Rec. 4157)

> "First, the amendments limit the quitclaim to 3 miles from low-tide mark seaward for all the States which lie along the sea."

This amendment was debated in the Senate on April 29 and April 30, 1953. In his closing argument

---

* Senator Anderson said:

"Nevertheless, Senators would bury the Secretary of State in the same grave. He realizes the problem that we face.

"My bill provides for a 3-mile limit. It does not go beyond such 3-mile limit. It does not bring the State Department into trouble all over the earth." (99 Cong. Rec. 3951)

Compare Government Brief, 101, 147-150.

in favor of his amendments, Senator Monroney repeated that his primary objective was as follows: (99 Cong. Rec. 4201)

> "First of all it would provide a definite cut-off of quitclaiming title to 3 miles in the open sea. . ."

A record vote was taken on the Monroney amendment, and on the question of agreeing to the amendment, the vote was yeas 22, nays 59, and 15 not voting, and it was rejected. (99 Cong. Rec. 4203)

Later, Senator Magnuson offered two amendments, for the sole purpose of limiting the definition of "boundaries" to include "the seaward boundaries of a State or its boundaries in the Gulf of Mexico . . . as they existed at the time such State became a member of the Union, but not to exceed a line 3 geographical miles distant from the coastline of each State . . ." (99 Cong. Rec. 4473)

In his statement on the floor of the Senate, Senator Magnuson using the same arguments which now appear in the Government's Brief explained the effect of his amendments as follows: (99 Cong. Rec. 4473)

> "In effect, the two amendments limit the so-called Holland joint resolution to the 3-mile limit."

A written explanation by Senator Magnuson of his amendments, containing substantially the same statement, was printed in the Record. (99 Cong. Rec. 4474)

After debate in which the issue was clearly drawn as to whether the Holland Resolution should be amended so as to limit the transfer to 3 miles in the Gulf of Mexico or should be based on the historic boundaries of the States extending beyond 3 miles from the coast (99 Cong. Rec. 4473-4478), a vote was taken and the amendments offered by Senator Magnuson were rejected. (99 Cong. Rec. 4478).

IN THE HOUSE

A similar amendment, having the purpose of limiting the transfer to the States to three miles from the coast, was proposed in the House of Representatives by Congressman Yates of Illinois. He proposed an amendment to Section 4 of H. R. 4198 which would eliminate any reference to boundaries beyond three geographical miles. (99 Cong. Rec. 2567) His amendment was explained by Congressman Yates as being "that we declare now that it is in the national interest for the seaward boundary of the United States, regardless of what State boundaries may be claimed, to be 3 miles from the shore line." (99 Cong. Rec. 2568)

Referring to the Yates amendment, Congressman Frank Wilson of Texas said that "the effect of this amendment would be that the seaward boundary of every State in the Union, coastal States, or Great Lake States would be limited to three miles . . ." (99 Cong. Rec. 2568)

The issue was thus clearly drawn between a bill which would grant property rights out to the historic boundaries of the States extending beyond three miles

and the Yates amendment which would limit the transfer to all States to a national boundary to be declared by Congress at three miles. The vote was taken on this amendment and upon a division demanded by Congressman Yates, the vote was "ayes 17, noes 83. So the amendment was rejected." (99 Cong. Rec. 2569)

In both Houses of Congress, therefore, the issue was clearly presented and the majority voted in favor of a statute which gave recognition to the historic boundaries of the States as the measure of the grant, and specifically refused to adopt amendments which would limit the transfer to three miles or to fix a national boundary at three miles. The very arguments that the Solicitor General now makes to this Court were presented to and rejected by the Congress and the President in passing and approving the Submerged Lands Act. Their decision on this question of policy is final.

(c) *By Section 4 of the Act, Congress intended that State boundaries were to be considered as having existed beyond three miles if such boundaries were so provided by the constitution or laws of the State prior to or at the time the State became a member of the Union.*

We have hereinbefore pointed out that there is a clarification of the intention of Congress as to the meaning of States' "boundaries," in the last sentence of Section 4 of the Act (67 Stat. 31, 43 U.S.C., Supp. V, 1312), which provides that nothing in that section shall be construed as questioning or in any

manner prejudicing "the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union." (Supra, p. 18) What Congress had in mind was that if a State by its constitution or laws had provided a boundary of more than three geographical miles prior to or at the time the State became a member of the Union, and such provision continued in effect to the time of admission to the Union, then its boundaries would, for the purpose of the Act, be regarded as having "existed" at the time of admission.

During the debate on Senate Joint Resolution 13, Senator Holland, in explaining Section 4, made it plain that what Congress meant by a boundary existing at the time a State became a member of the Union was a boundary which was provided by the constitution or laws of the State prior to or at the time the State entered the Union: (99 Cong. Rec. 2896)

> "In other words, the only way that any limit for any State could ever be fixed beyond three geographical miles under the proposed law would be by fulfilling the conditions prescribed, that is, by showing that '*its constitution or laws prior to or at the time such State became a member of the Union,' made such a provision*, or if its seaward boundary 'has heretofore or is hereafter[10] approved by Congress' as actually extending beyond the three-mile limit." (Emphasis added)

---

[10] The provision as to boundaries "hereafter" approved was eliminated in the Senate. 99 Cong. Rec. 4114-4116.

Section 4 of the Act was therefore explained as meaning, when construed with Section 2, that a State's boundary would be considered as having "existed" at the time the State became a member of the Union if such boundary was provided by the constitution or laws of the State prior to or at the time the State became a member of the union.

(d) *The limitation to boundaries existing at the time a State became a member of the Union was intended to exclude any extension of boundaries thereafter asserted, unless approved by Congress, and does not preclude consideration of boundaries before statehood.*

The purpose of the provisions of Section 2(b) of the Submerged Lands Act, that a State's boundaries should be its boundaries as they existed "at the time" the State became a member of the Union, (67 Stat. 29, 43 U.S.C., Supp. V, 1301) together with the provisions in Section 4 regarding the existence of boundaries as provided by the Constitution or laws of a State "prior to or at the time" the State became a member of the Union, (67 Stat. 31, 43 U.S.C. Supp. V, 1312) was to limit the transfer in such cases to the historic or traditional boundaries of the State, as distinguished from any extension of boundaries asserted after admission. It was certainly not the purpose of Congress to limit the area of the transfer of rights on the basis of the boundaries as they existed *after* the State became a member of the Union, whether determined by national foreign policy or

otherwise, unless such boundaries were approved by Congress.

In speaking to this point, Senator Daniel said: (Senate Interior Committee Hearings on S. J. Res. 13, 83rd Cong., 1st Sess., 326)

> "The Holland Bill covers all of the portion of the continental shelf lying within *original historic State boundaries.* These lands would be restored to the States. The Holland Bill does not attempt to settle the problem of ownership, management and control of that part of the continental shelf lying outside of the *original State boundaries.*" (Emphasis added)

Later, during the hearings, Senator Daniel said: (Senate Interior Committee Hearings, Part 2 (Executive Sessions), on S. J. Res. 13, 83rd Cong., 1st Sess., 1292)

> "As to Senator Anderson's statement that the States would be in here claiming ownership of the outer shelf, as you know, I did not propose that. And I will not be in here claiming any ownership beyond our *original boundaries* or any management of leasing beyond our *original boundaries.*" (Emphasis added)

In the debate in the House, Congressman Wilson of Texas stated: (99 Cong. Rec. 2510)

> "As was stated by the gentleman from Louisiana (Mr. Willis), this bill deals with the *inner continental shelf* which is out to the *historical boundaries* of the several states." (Emphasis added)

In the debate in the Senate, Senator Daniel made it plain that the purpose of the bill was not to recognize claims of boundaries made by the constitution or laws of a State enacted *after* its admission (unless such boundaries were approved by Congress) and that the area covered by the bill was limited to boundaries as provided by the laws or the constitution of the State prior to or at the time the State became a member of the Union: (99 Cong. Rec. 2832)

> "I shall not yield further, Mr. President, for any question on lands beyond historic boundaries, because such lands were eliminated from the resolution specifically for the purpose of confining it to lands within historic boundaries. The resolution confirms the jurisdiction and control of the United States Government over the resources outside the historic boundaries of the coastal States."

The purpose of Congress was to make it plain that in speaking in Section 2 of the Act of boundaries as they "existed," when the State became a member of the Union, Congress was referring to boundaries as provided by the constitution or laws of the State before or at the time the State became a member of the Union, and not to boundaries which may have been asserted by the State after admission, except in those cases where later boundaries had been approved or confirmed by Congress. It certainly is not proper, therefore, to construe the Act to mean that the boundaries of States as they existed prior to statehood are of no importance, as the Government argues in its Brief, pp. 47-51. This

argument completely disregards the countless statements and reiterations of the purpose of the sponsors of the legislation to measure the transfer of property rights by the "historic," "original," and "traditional" boundaries of the States. It is academic to consider what the result might have been under the Act if a State had provided by its laws for a three-league boundary but had changed its laws so that at the time of admission the State was asserting a boundary of only three miles. There are no such instances with reference to any of the States in this case. All of these States, on the various bases that will be shown in their separate briefs, assert boundaries of three leagues or more from the coast both prior to and at the time of their admission to the Union. It is important to show what boundaries were thus provided by the constitutions or laws of the States, because it is these boundaries that the Submerged Lands Act intended to use as the measure of the transfer of property rights to the States.

The Government has also made the argument that upon the instant that statehood began, the boundary of the State, even if it had immediately theretofore existed at more than three miles, was automatically withdrawn to a line three miles from the coast. This argument is specifically made with reference to Texas (Government Brief, 237-240) and it is implied under Point I, applicable to all of the defendant States (Government Brief, 47-51).

This Government argument is directly contrary to the plain intention of Congress to measure the transfer of rights on the basis of the States' historic boundaries. The phrase "at the time" does not neces-

sarily mean at the moment, or upon or after the completion of an event. It does properly mean what Congress clearly intended in the present case, which is the States' boundaries as they existed before admission and continuing up to the time of admission into the Union. The phrase "at the time" does not have any certain or inflexible meaning, and it has been given a variety of interpretations, depending upon the context in which it was used. See 4 Words & Phrases, "At the Time," p. 107; 7 C. J. S. "At," p. 161.

As an illustration of a case in which the phrase "at the time" was given a meaning like that which Congress intended in the Submerged Lands Act, we refer to *Barnett vs. Strain*, 151 Ga. 553, 107 S. E. 530, 532. In that case, the court had before it the construction of a part of the written charge of the trial court, which used the expression, "at the time of the execution of the deed." The court there held that this phrase "did not have the effect of excluding from the consideration of the jury any agreement entered into between A. J. Barnett and his wife prior to the particular moment of the transfer." In support of this conclusion, the court further said: (107 S. E. 532)

> "Giving the word 'at' its proper signification the jury were not confined to a consideration of what took place at the very moment of the execution of the document referred to, and it is not probable that they thought that they were excluded from considering transactions or agreements that were involved in the final act of executing the deed. The word 'at' is a term of con-

siderable elasticity of meaning, and is somewhat indefinite. It is not a word of precise and accurate meaning, and it has been said that the connection furnishes the best definition. As used to fix a time, it does not necessarily mean eo instante, or the identical time named, or even a fixed, definite moment."

There is nothing in the phrase "at the time" as used in Section 2 of the Act, which requires this court to construe the Act to mean States' boundaries *after* the States became members of the Union. From the committee hearings and the debates, it is clear that Congress used this measure and the words "existed" and "existence" of the State's boundary prior to or at the time the State entered the Union, in line with the statement of this Court in *New Mexico vs. Colorado*, 267 U. S. 33, 43, as follows:

" . . . The right of a State, upon its admission into the Union, to rely upon its established boundary lines, cannot be impaired by subsequent action on the part of the United States."

3. *All parts of the Submerged Lands Act, including transfers of rights to three leagues in the Gulf of Mexico, should be given effect and not nullified.*

If the construction of the Submerged Lands Act urged by the Government is correct, the historic boundaries of the States must be ignored as a measure of the transfer of property rights. Such a construction of the Act would plainly have the effect of defeating the intention of Congress and the President. It would

nullify and eliminate from the statute the several provisions therein for the transfer of rights extending beyond three miles but not more than three leagues from the coast into the Gulf of Mexico. The construction urged by the Government would make these provisions vain and devoid of significance. Of even more serious consequence, the construction urged by the Government would in effect attribute to Congress and the President the purpose of appearing to make transfers in recognition and satisfaction of the historic claims of the Gulf States with no bona fide intention that the words having this apparent meaning would be given any effect whatever. Such purpose on the part of Congress and the President should not be attributed to them if the statute can be construed so as to give effect to the words which Congress used and the President approved.

This Court said in *Ex Parte Public National Bank of New York*, 278 U. S. 101, 104.

> "No rule of statutory construction has been more definitely stated or more often repeated than the cardinal rule that 'significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, § 2, it was said that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant."' Washington Market Co. v. Hoffman, 101 U. S. 112, 115."

What this Court said, in rejecting the interpretation urged by the Government of another federal

statute, in *United States vs. Menasche*, 348 U. S. 528, 538, is apposite:

> "'The cardinal principle of statutory construction is to save and not to destroy.' National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 30. It is our duty 'to give effect, if possible, to every clause and word of a statute,' Inhabitants of Montclair Tp. v. Ramsdell, 107 U. S. 147, 152, *rather than to emasculate an entire section, as the Government's interpretation requires.*" (Emphasis added)

4. Interpretation of the Submerged Lands Act in Alabama vs. Texas.

The Submerged Lands Act has previously been before this Court in *Alabama vs. Texas*, 347 U. S. 272. The Solicitor General, in representing the Federal officials who were named as defendants, successfully defended the validity of this Act. It is evident from reading the pleadings, the briefs, the report of the oral argument, and the opinions, that it was assumed throughout as being so plain that it was beyond controversy that the Submerged Lands Act was intended to transfer rights beyond three miles to States on the Gulf of Mexico.

This assumption is implicit in the per curiam opinion of the Court and in the concurring opinion of Mr. Justice Reed. It was expressly recognized in the dissenting opinion of Mr. Justice Black, who said (347 U. S. 277) with reference to the transfer to the coastal States, that while "Some states are given a three-mile strip of ocean" other states "are given

about ten miles . . ." The dissenting opinion of Mr. Justice Douglas likewise indicates that it was his opinion that Congress intended to make a transfer of property rights depending upon the historically asserted rights of the States and that Congress was by no means simply indulging in an idle gesture in including in the Act provisions for a transfer out to three leagues in the Gulf of Mexico.

It is entirely inconsistent with the assumption made by all parties and by this Court in *Alabama vs. Texas*, based on plain Congressional purpose, for the Government to take the position now that the three-league provisions of the Act are meaningless and of no effect and that the Gulf States are after all limited to three miles from their coasts, regardless of where their historic boundaries may have been.

5. *Presidential purpose in urging passage of and approving the Submerged Lands Act.*

In its Brief, pages 20, 242-251, the Government discusses statements made by President Eisenhower in connection with the Submerged Lands Act, included in a letter written by President Eisenhower (99 Cong. Rec. 3865) in response to a letter addressed to him by Senator Anderson and other Senators opposing the bill and urging the President to oppose it on the same contentions now made by the Solicitor General. (99 Cong. Rec. 3532) No reasonable conclusion can be drawn from these statements except that the President thought that the Submerged Lands Act would transfer to Gulf States property rights out to their historical boundaries, extending three

leagues into the Gulf of Mexico, and that he urged passage of the legislation on this basis.

In his letter, the President quotes with approval the pledge in the Republican platform in favor of "restoration to the States of their rights to all lands and resources beneath navigable inland and offshore waters within their historic boundaries" (99 Cong. Rec. 3865).

In the same letter, the President quotes one of his own speeches in which he stated that he favored "recognition of clear title" to the States in "all submerged lands and resources beneath inland and offshore waters which lie within historic State boundaries," that twice Congress had voted to recognize "the traditional concept of State ownership of these submerged areas," that these acts had been twice vetoed by the President, but that "I would approve such acts of Congress." (Id.)

Specifically referring to the State of Texas, President Eisenhower said that Texas upon its admission to the Union agreed to pay the $10 million debt of the Republic and "kept its 200 million acres of lands, including the submerged area *extending 3 marine leagues seaward into the Gulf of Mexico.*" (Id.) (Emphasis added)

In another speech which is quoted on page 245 of the Government's Brief, the President said:

> "I have always felt that the title to these submerged lands should be recognized in the *States* out to *their* historic boundaries." (Emphasis added)

In order to remove all doubts as to whether he might have changed his mind after he was elected, the President in his letter said, "My position is the same today," and "I favor the prompt passage by the Senate of Senate Joint Resolution 13 with any amendments the Senate may approve not inimical to the principles I have expressed." (99 Cong Rec. 3865).

In the House of Representatives, Congressman Hillings of New York quoted the speech of President Eisenhower in New Orleans on October 13, 1952. (99 Cong. Rec. 3490) In this speech, President Eisenhower said with regard to his position on the recognition of historic rights asserted by the States in submerged lands: (Id.)

> "So I repeat for the benefit of my opponents who have gone out of their way to misrepresent my views: I favor the recognition of these ancient property rights of the States in submerged lands."

The President's letter, written while the Senate was debating the Submerged Lands Act, in line with speeches he had made and which were quoted in the floor debates, removes all doubt as to his purpose and intention in urging the passage of the Submerged Lands Act.

The New York Times of May 23, 1953, p. 1, Col. 4, reported the President as stating when he approved the Act:

> "I am pleased to sign this measure into law recognizing the ancient rights of the states in

the submerged lands within their historic boundaries."

What the Government now contends is directly contrary to the plain meaning of public statements made by the President. If the Government's position should be sustained, the Congressional and Presidential purpose would be frustrated. Even worse, an Act of Congress, urged and approved by the President, which was considered of great public importance and which was thoroughly and vigorously debated throughout its passage, would be branded as being a hollow gesture, passed and approved with no real intention that the Act would be of any real force and effect in recognizing the rights and equities historically asserted and exercised by the Gulf States. Every rule of public policy as well as statutory construction demands that such interpretation not be given to the Submerged Lands Act.

The Congress was not concerned only with legal rights, but was also concerned with what it conceived to be considerations of justice and equity, which it should take into account in settling what was described as a "bitter controversy" by Congressman Reed of Illinois, Chairman of the Committee on the Judiciary of the House of Representatives, in the debate on H. R. 4198: (99 Cong. Rec. 2502)

"I make that statement in all sincerity and with all the fervor of my conviction in it. In enacting this bill we the Congress will not only

terminate this wasteful, bitter controversy, we will not only properly and fairly dispose of natural resources and lands *in accordance with the principles of justice and equity*, we will recognize the rights of the States and *thereby restore their confidence in the integrity of our Federal Government* but, most of all, we will be restoring the traditonal philosophy of the American way of life in national affairs." (Emphasis added)

The Act was plainly intended, as both supporters and opponents realized and acknowledged, to be in effect a settlement and compromise of a long-standing controversy between the States and the Federal Government as to the ownership and control of the submerged lands. While it had been held by the Court that the Federal Government had paramount rights in such lands and resources, it was universally acknowledged that the Congress had unlimited power to dispose of property rights in such lands. Whether the historic boundaries claimed by the Gulf States should be sufficient basis for the Congress to transfer rights to them out to three leagues from the coast rather than three miles was a matter for Congress to decide. The issue was clearly drawn in Congress. The Congress and the President chose to measure the extent of the transfer to the Gulf States by their original historic boundaries. This was a settlement which the Congress and the President deemed just and proper. It should not now be repudiated. Nothing less than the good faith of the United States is at stake.

6. *Attorney General Brownell's recommendation as to drawing a line on a map.*

At pages 20 and 246-251 of its Brief, the Government refers to statements by Attorney General Brownell before the Senate Committee on Interior and Insular Affairs, in which he recommended that an actual line on a map be drawn fixing the limit of the transfer to the States. The inference which the Government apparently wishes the Court to draw from the failure of the Congress to draw a line on a map is that Congress made a decision to reject "the idea of giving those States rights in any specific area beyond the three-mile limit, deciding instead to limit all States to their boundaries as they actually were, not as they had been claimed to be." (Government Brief, 250-251)

Such an inference from the refusal of Congress to draw a line on a map would be wholly unjustified. The practical difficulties of attempting to draw an accurate line on a map were indicated at the hearings at which Attorney General Brownell testified. Any line drawn, whether a three-mile line or a three-league line, would have to be based on a location of the coast line. Senator Kuchel, in questioning Attorney General Brownell, pointed out the fact that this Court, in its decision in the California case, had stated that "location of the exact coastal line may involve many complexities and difficulties . . ." (*United States vs. California*, 332 U. S. at 26) and Senator Kuchel added that "six years after that decision the question of what constitutes the boundary line of California still remains an open ques-

tion. A master's report has finally been made, objected to, and is still under submission." (Senate Interior Committee Hearings on S. J. Res. 13, 83rd Cong., 1st Sess., 947)

When Attorney General Brownell was testifying before the House Committee, it was pointed out by Congressman Willis of Louisiana that the drawing of a line on the map would require the location of the coast line (House Judiciary Committee, Subcommittee No. 1, Hearing on H. R. 2948, 83rd Cong., 1st Sess., 229) and that the drawing of the map would "involve delays" which would mean that the legislation could not be acted on "for a long time to come." (Id., 230) Congressman Wilson of Texas took the position also that the drawing of the map would cause delay (Id., 234) and probably "require hundreds of map drawers years to complete the gigantic job" of tracing the exact location of the coast line. (Id., 373).

Congressman Celler of New York in explaining why the House Committee did not follow the suggestion of the Attorney General about drawing a line on a map, stated in debate in the House of Representatives: (99 Cong. Rec. 2489)

> "Mr. Celler: Mr. Speaker, finally the distinguished Attorney General said: 'Draw a line between that which belongs to the States, and that which belongs to the Federal Government.' He was rather naive in making that statement, because *every member of the committee objected* and said it would take until kingdom come to draw any sort of line of that kind. So that tack was discarded." (Emphasis added)

Senator Holland, who sponsored the resolution, made the following additional explanation based in part on his understanding that the *Attorney General had withdrawn his suggestion*: (99 Cong. Rec. 2621)

"Mr. Holland. Mr. President, I thank the distinguished Senator from Oregon. I should like to have my remarks apply not only to the question just raised by the distinguished Senator from Illinois (Mr. Douglas), but also to the question raised by the Senator from Alabama (Mr. Hill) with reference to *a proposal at one time made by the Attorney General, but, as I understand, later withdrawn by him.* That proposal of the Attorney General was to the effect that in the passage of legislation like that now pending the Congress should draw a little red line on the map surrounding the various States, and indicate that the legislation applied up to that red line and not farther.

"The Committee decided, wisely, I believe—and as the Senator from Florida is not a member of the committee he may speak of wisdom existing within the committee, and *the Senator from Florida also understands that the Attorney General joins in that opinion—that the drawing of a red line would not in any way avert trouble, but, to the contrary, probably would provoke more trouble*, because no right existing in any State could possibly be diminished by the drawing of such a red line; that if there is a dispute as to where the boundary of a State runs, it will necessarily require legal determination and decision by the United States Supreme Court; and that the drawing of a line would just add an additional complicating factor." (Emphasis added)

Later during the debate Senator Cordon made a further statement of why the Committee decided not to draw a line, saying that this decision of the Committee was made *with the agreement of the Department of Justice*: (99 Cong. Rec. 1696)

> "As to whether it would be better to draw such an arbitrary line, or to choose another method that might be evolved by someone else, I can only say that the line idea was considered and, *with the agreement of the Department of Justice, was abandoned.*" (Emphasis added)

In view of the complexities and difficulties of attempting to draw a line on a map which would be accurate and conform to the physical facts, it seems that Congress made a wise decision in not trying to draw a line on a map and include it in the bill. The Senators quoted above stated without contradiction that the Attorney General had agreed to the abandonment of his suggestion. The fact that Congress did not draw a line on a map is no indication whatever that Congress did not intend to transfer rights out to three leagues.

C. The Court need not decide the location of a national maritime boundary in the Gulf of Mexico, nor is the decision in this case controlled by foreign policy.

As we have pointed out above, the Submerged Lands Act does not mention a national boundary or territorial waters as the outer limit of the area

within which property rights are transferred in the Gulf of Mexico. On its face, therefore, the Act does not require the Court to locate a national maritime boundary or the limit of territorial waters in order to determine the areal extent of the transfer of rights by the Act.

The Act does not limit the transfer of rights to present State boundaries, but, on the contrary, very definitely was intended to be a transfer of rights measured by historic State boundaries. The Court therefore need not decide the location of the present boundaries of the States, because if the boundaries of the respective States either at the time the States became members of the Union, or as approved by Congress before the passage of the Submerged Lands Act, extended as much as three leagues from the coast into the Gulf of Mexico, the Act makes three leagues from the coast the measure of the transfer of the property rights, irrespective of where the present State boundaries may be.

1. *The transfer of rights to the States beyond the three-mile line is within the power of Congress.*

The Government in this suit does not question the right and power of the United States to establish ownership, jurisdiction and control over the seabed and subsoil in the area beyond three miles from the coast and extending to the outer edge of the continental shelf, but admits that right and power. (Government Brief, 109-115, 148, 250) In fact, the very basis of this suit is the claim that the United

States owns such rights. These rights have been established and are asserted by the United States, irrespective of the fact that they extend beyond what the Government asserts is the national boundary and the limit of territorial waters at the three-mile line.

Since the United States owned rights and had established jurisdiction and control in the area beyond the three-mile line, the power of Congress to dispose of property belonging to the United States extends to the area in controversy and there is no reason why rights in this area should not be transferred by Congress to the respective coastal States. That Congress has this power was necessarily decided by this Court in *Alabama vs. Texas*, 347 U. S. 272.

The Government concedes

> "that the mineral rights which the United States asserts in the continental shelf could be apportioned between the States and the Federal Government in any way that Congress chose, and that that apportionment would not concern foreign policy or foreign nations." (Government Brief, 16)

Later in its Brief, the Government concedes

> "that the United States claims control over the resources of the seabed beyond its maritime boundary, as far as the edge of the continental shelf, and that whether such control is to be exercised by the National Government or by the States is a matter of domestic distribution of

> powers which does not concern other nations," (Id., 148)

and that

> "since the United States claims, as against other nations, the right to control exploitation of the continental shelf, it could delegate to the States any portion of such control without regard to the location of State boundaries." (Id., 250)

In spite of these admissions as to the power of Congress, the Government argues that Congress did not intend to exercise this power beyond the three-mile limit in the present case. An examination of the words of the Act and its legislative history, however, shows that Congress plainly did intend to exercise its power to transfer property rights to the States measured by the States' historic boundaries and extending three leagues from the coast in the Gulf of Mexico, and that Congress deliberately drew the statute in such a way as to avoid any conflict with national foreign policy.

2. The Submerged Lands Act was drawn so as not to conflict, and it does not conflict, with national foreign policy.

The Submerged Lands Act is worded so as to show an intention to dispose of *property rights*. The language used is that normally used in the transfer, relinquishment, and confirmation of property rights. Section 3, paragraph (a), provides in part that "title and ownership of the lands . . . and the natural

resources . . . and the right and power to manage, administer, lease, develop and use said lands and natural resources . . . are . . . recognized, confirmed, established, and vested in and assigned to the respective States . . ." (67 Stat. 30, 43 U. S. C. Supp. V, 1311)

Section 3, paragraph (b) of the Act provides in part that the United States "releases and relinquishes unto said States . . . all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources . . . and all claims . . . for money or damages . . ." (Id.)

To be doubly sure that the purpose of the Act is made plain, other clauses expressly retain national powers, including those over national defense and international affairs. Section 3, paragraph (d) of the Act provides that the Act shall not affect the constitutional authority of the United States in "said lands and waters" for the purpose of "navigation or flood control or the production of power, or be conconstrued as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power." (67 Stat. 31, 43 U. S. C. Supp. V, 1311)

Section 6, paragraph (a) of the Act provides that "the United States retains all its navigational servitude and rights in the powers of regulation and control of said lands and navigable waters for the constitutional purpose of commerce, navigation, national defense, and international affairs, all of

which shall be paramount to, but shall not be deemed to include proprietary rights of ownership, or the rights of management, administration, leasing, use and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by Section 3 of this Act." (67 Stat. 32, 43 U. S. C. Supp. V, 1314).

It is apparent from the terms of the Act that it was the intention of Congress to transfer property rights within the area covered by the Act, *without relinquishing the authority and control of the United States over commerce, navigation, national defense, or international affairs.*

The legislative history of the Act likewise shows that it was the intention of the Act to limit the transfer to the States to property rights and the power of management and control in connection therewith, without relinquishing the constitutional authority of the National Government over matters affecting foreign policy.

At the hearings before the Senate Committee, the State Department was represented by Mr. Jack B. Tate, Deputy Legal Adviser. In the course of his testimony, he said: (Senate Interior Committee Hearings on S. J. Res. 13, 83rd Cong., 1st Sess., 1053)

> "The Department believes that the grant by the Federal Government of rights to explore and develop the mineral resources of the Continental Shelf off the coasts of the United States

can be achieved within the framework of its traditional international position."

In elaborating upon his statement, upon a question by Senator Jackson as to whether international obligations would be violated if Congress granted rights beyond the three-mile limit, Mr. Tate said: (Id., 1067)

> "We have taken the position that whether *this exploration of the seabed is done by the Federal Government or the State governments is not a matter of international concern, nor is it a matter that, as far as I know, would conflict with any of our treaty obligations.*" (Emphasis added)

In further explanation of the position of the State Department, Mr. Tate said: (Id., 1068)

> "The United States claims the right of exploration and exploitation of the seabed and subsoil out to the extent of the Continental Shelf. *If the United States Congress decides that that exploitation should be done by the States rather than the Federal Government, then I would assume that they could transfer that right of exploitation to the States, and the United States might do that the same for all States or differently for different States.*" (Emphasis added)

As to the right to transfer to the States the development of the Continental Shelf, Mr. Tate was asked the following questions and made the following replies: (Id., 1080)

"Senator Daniel . . . As far as jurisdiction and control, whatever sovereignty we have asserted, do you feel that the domestic law of our Nation can apply to it?

"Mr. Tate. That is correct.

"Senator Daniel. And that jurisdiction, if the Congress wants to allow it, jurisdiction for certain purposes could be given to the States over that area the same as over lands beneath their territorial waters?

"Mr. Tate. As far as our international relations are concerned, I think that is correct."

It was the purpose of the sponsors of the Joint Resolution to act within the powers of Congress and in such a way as to avoid any conflict with foreign policy. They were of the opinion that they had done so by Senate Joint Resolution 13, which contained the terms of the bill as finally enacted. During the debate on this resolution, Senator Cordon presented a statement which he had prepared "in collaboration with other coauthors of the Resolution and with members of the Committee on Interior and Insular Affairs." (99 Cong. Rec. 4382) In presenting this statement, he stated that its purpose was to show "that the true intent and effect of Senate Joint Resolution 13 are to establish a policy which is clearly within the authority of the Congress of the United States." (Id.) He stated on the floor of the Senate that his purpose in presenting the statement was "in order that every Member of the Senate might have an opportunity to consider this statement prior to a final vote on the passage of the resolution

. . ." (Id.) The concluding paragraph in this statement reads in part as follows: (99 Cong. Rec. 4385)

> "As shown by the evidence furnished by the State Department and by the Presidential proclamation and Executive order of September 28, 1945, *the vesting or establishment of these proprietary rights in the States is a matter of domestic concern and will not interfere with international law or present and future international agreements and obligations*, so long as they are vested or established subordinate and subject to the constitutional governmental powers of the national sovereign. *That is exactly what is intended to be accomplished by the terms of Senate Joint Resolution 13*, . . ." (Emphasis added)

Near the close of the debate, Senator Holland made the following explanation of the purpose of the Joint Resolution which bore his name: (99 Cong. Rec. 4096)

> "*Boundaries are wholly incidental to the proposed legislation.* It is because of that incidentally, that *the international question, which I shall not deal with now, fades into very minor significance in this matter, because we are having to do here with assets, pure and simple, and not with territorial boundaries*. . ." (Emphasis added)

It is apparent from the legislative history of the Act that the sponsors of the bill wrote it not only so that it would be within the constitutional power of Congress but also in a manner which

would not conflict with the foreign policy of the United States, as stated to the Congress by representatives of the Department of State. The argument of the Government in this case that the Court must determine the location of the national boundary, and that in deciding this question the Court must be bound by the declaration of the Secretary of State, is directly contrary to the plain intention of Congress and the President to measure the area covered by the Act on the basis of historic State boundaries, and thereby to avoid tying the Act up with the presently highly controversial subject of the extent of "territorial waters" and the location of national maritime boundaries.

3. The Act does not depend on the breadth of the territorial sea claimed by the United States.

We have already quoted in this brief the comment of the American Law Institute with regard to the Submerged Lands Act. (Supra, pp. 7-9) That comment recognizes that the Submerged Lands Act transfers to States on the Gulf of Mexico "title to oil and other resources beneath the waters of the Gulf of Mexico extending nine miles [11] from the coast." It further concludes that the Act "does not require the United States to change its traditional position regarding the three-mile limit." While the comment says that there was some confusion because of the use of the term "boundaries" as a "criterion for determining whether a state of the United States

[11] It is clear that nine *geographical* miles (equal to three marine leagues) is intended.

bordering on the Gulf of Mexico should exercise the jurisdiction over these resources or whether such jurisdiction should be exercised by the federal government of the United States" the comment says that the decision of this Court upholding the Act "on the ground that there was no limitation on the authority of Congress to dispose of property of the United States" in *Alabama v. Texas*, 347 U. S. 272, made it plain that the Act was not in conflict with the foreign policy of the United States, although it was recognized that the Act gave to some States rights out to three leagues from the coast. The conclusion of the comment, supporting the position here taken by the States, is as follows: (American Law Institute, Restatement of The Foreign Relations Law of the United States [Tentative Draft No. 2, May 8, 1958], page 28)

> "Construed in this manner, the Act does not depend on the breadth of the territorial sea claimed by the United States under international law."

The conclusion stated is plainly correct when the distinction is recognized between the rights in the submerged lands, which are at issue in this case, and the considerations which determine a nation's position on the question of the extent of "territorial waters." As shown by Secretary Dulles' letter, these considerations as to territorial waters include the rights to prohibit hostilities between foreign vessels, to exclude foreign warships, and to protect commerce and navigation by sea and air, within a

nation's territorial waters. Conversely, as to the territorial waters of other nations, these considerations include the rights of our sea vessels and aircraft to freedom of the seas and the air, or the right to freedom from exclusion from areas extending unreasonable distances from the coasts of other nations. (See Government's Brief, 342-346.)

On the other hand, the right to explore and develop the submerged lands and the natural resources therein, so long as navigation and commerce are not interfered with, involves obviously different considerations. This is recognized by the settled policy of this nation to exercise exclusive control and jurisdiction, so far as these rights in submerged lands are concerned, to the outer edge of the continental shelf along all of our seacoasts. Therefore the Court should not allow the reasons for desiring a narrow belt of "territorial waters" to influence a decision regarding the apportionment between the States and the Federal Government of rights in submerged lands when all agree that this nation and this nation alone (either through the States or the Federal Government) will be permitted to exercise these rights.

4. *The Court is not controlled by statements in the letter of Secretary of State Dulles as to the effect of foreign policy on the issues to be decided in this case.*

The Government places strong reliance in its brief on the letter written by Secretary of State Dulles, arguing that the statements therein are conclusive

upon this Court. (Government Brief, 120-147.) The last sentence in the first paragraph of Mr. Dulles' letter shows that he was answering upon certain assumptions of law which were stated for him by the Attorney General: (Government Brief, 342)

> "You point out that this issue involves the location of the maritime boundary of the United States and you request a statement of the position of the United States concerning the extent of its territorial waters, particularly during the early years of its history."

It is plain from the sentence just quoted that the reply of Mr. Dulles to the Attorney General was based upon certain assumptions which the Attorney General made for the Secretary of State. These assumptions are entirely incorrect, because the decision of the present case does *not* require the location of the maritime boundary of the United States nor does it depend upon the position of the United States concerning the extent of its territorial waters. It should be noted, moreover, that Mr. Dulles after stating the assumption made by the Attorney General never again in his letter refers to a national "boundary", and all of his comments are related to the extent of "territorial waters."

This Court is not bound by the statement of the Secretary of State or any other executive official on the question of law whether the foreign policy of the United States shall control the decision of this case. The distinction must be drawn between the power to determine the foreign policy of the United States, which is a *political* function, and the power

to decide as a matter of law whether the issue before the Court is a question of domestic rights independent of foreign policy, which is a *judicial* function. In deciding this legal question the Court is not subject to the dictation of the Secretary of State or any other executive official. Most emphatically the Court is not bound to accept statements of the Secretary of State as to what questions must be decided in this controversy, particularly when the statements of the Secretary of State are based upon erroneous assumptions regarding the issues before the Court, which assumptions were made for the Secretary of State by the Attorney General after the Attorney General had brought this suit. It would be a truly strange situation if the attorney for one of the litigants should be permitted to bind the Court as well as the opposing parties by making statements of the issues to be decided, so as to conform to and support his own contentions.

This Court has previously rejected a contention made by the representative of the State Department that foreign policy should control its decision, in determining the geographical application of an act of Congress. In *Vermilya-Brown Company vs. Connell*, 335 U.S. 377, the question was the applicability of the Fair Labor Standards Act to certain employees on the leasehold of the United States located on the Crown Colony of Bermuda. In a letter to the Attorney General which is copied in part in a footnote to the dissenting opinion of Mr. Justice Jackson (335 U. S. 401, footnote 12), the Legal Adviser to the Secretary of State wrote that he regarded the con-

clusion of the Court of Appeals as "unfortunate" and that "such a holding might very well be detrimental to our relations with other foreign countries in which military bases are now held or in which they might in the future be sought." This Court held, however, that while the determination of foreign policy is a political function, the Court can properly decide for itself whether the application of the statute involved to the area in question would conflict with that policy. In affirming the decision of the Court of Appeals that the statute was applicable to the leasehold of the United States, located on Bermuda, this Court said: (335 U. S. 380)

> "(1) We shall consider first our power to explore the problem as to whether the Fair Labor Standards Act covers this leased area. Or, to phrase it differently, is this a political question beyond the competence of courts to decide? Cf. Coleman v. Miller, 307 U. S. 433, 450; Colegrove v. Green, 328 U. S. 549, 552. There is nothing that indicates to us that this Court should refuse to decide a controversy between litigants because the geographical coverage of this statute is involved. Recognizing that the determination of sovereignty over an area is for the legislative and executive departments, Jones v. United States, 137 U. S. 202, does not debar courts from examining the status resulting from prior action. De Lima v. Bidwell, 182 U. S. 1; Hooven & Allison Co. v. Evatt, 324 U. S. 652."

It is apparent that the Court in *Vermilya-Brown Company v. Connell*, supra, did not consider the

opinion of the Legal Adviser to the State Department as controlling on the question of the "geographical coverage" of the statute there involved.

The States urge, as the American Law Institute concluded, that the Submerged Lands Act "does not depend upon the breadth of the territorial sea claimed by the United States under international law." The States submit that any considerations of foreign policy are not controlling, because the controvery is a domestic dispute over property rights, and the Court need not decide the location of a national boundary in determining the rights of the Gulf Coast States under the Submerged Lands Act.

Moreover, the applicable foreign policy in this case has been decided against the government's contention by the political branches of the national government. The Congress by passing the Submerged Lands Act and the President by approving it determined that there is nothing in the nation's foreign policy that prevents a transfer of rights to the Gulf Coast States beyond three miles from the coast. This was a considered determination of the political questions involved by the political branches of the government which is binding on the Court. Representatives of the State Department testified before Congress that no embarrassment in foreign affairs would come from the apportionment of rights and powers between the Federal Government and the States as provided in the Submerged Lands Act. (Supra, pp. 52-54) Congress accepted, and the President's support and approval of the Act confirmed, this view. No letters from the State Depart-

ment should be permitted now to veto or reverse this deliberate decision on foreign policy by the political branches of the government.

D. The Submerged Lands Act does not require that the boundaries of the respective States as they existed when the States became members of the Union or as approved by the Congress should have been consistent with the foreign policy of the United States as declared by the State Department or recognized under international law at such times.

There is nothing in the Submerged Lands Act that requires that the "boundaries" of the States, as defined in the Act, should have been consistent with the foreign policy as declared by the Secretary of State of the United States at such times or that such boundaries should have been recognized by international law, to whatever extent international law might have been settled at such times.

While we believe that the Government is incorrect in saying that the United States has followed a uniform and unvarying policy with reference to a national boundary and the extent of its territorial waters, the States submit that it is unnecessary for the Court to go into these questions, because the Submerged Lands Act fixes a measure of the transfer of property rights therein on bases which are independent of any considerations of international law, either as accepted by the State Department of the United States or as generally recognized throughout the world.

It seems entirely clear that, as to the boundaries which were approved by the Congress prior to the enactment of the Submerged Lands Act, all that Congress had in mind was that such approval should be shown. If Congress approved the boundary, either expressly or by implication, it was the intention of the Submerged Lands Act that such approval would conclude the matter here at issue. There is no reason to think that Congress intended that its approval would be effective only if the approved boundary conformed to the views on international law of the State Department of the United States at or about that time. Much less could it be thought that Congress intended that its approval would be effective only if the boundary it approved conformed to the views on international law of text writers, publicists, or diplomats who, in defending the position of their countries on specific issues, took particular positions regarding the permissible extent of maritime boundaries and territorial waters.

Congress furnished definite and easily applicable tests for determining the measure of the transfer of rights which was effected by the Submerged Lands Act. Where a State's boundary was provided at more than three miles by its laws or constitution prior to or at the time it became a member of the Union, or where such a boundary has been approved by Congress, then that boundary is the measure of the transfer of property rights. In any case, of course, the transfer by the terms of the Act was not to extend more than three leagues from the coast into the Gulf of Mexico. Congress had no intention of requiring the establishment of the "validity" of the

boundary in either case on the basis of international law, as proclaimed by the State Department or as recognized by nations generally.

The States need only show that prior to or at the time they became members of the Union, their constitutions or laws provided for boundaries of more than three miles or that such boundaries otherwise "existed" at that time, or that such boundaries were "approved" by Congress before the passage of the Submerged Lands Act. They do not have to meet other requirements not included in the Act. They do not have to show that such boundaries, as they "existed" or were "approved," were "actual" or "actual legal" boundaries or "actual political" boundaries or boundaries "as they existed for the purpose of ordinary political jurisdiction," as contended by the Government, (Government Brief, 58, 148) if by those phrases it is meant that such boundaries had to conform to the view on the proper extent of territorial waters then proclaimed by executive officials of the United States or by other nations in general.

The Government's attempt to tie the determination of the States' historic boundaries to foreign policy with respect to territorial waters in order to limit the transfer of property rights to the States to three miles is particularly far-fetched when even the Government concedes that "foreign nations are not concerned with the outcome of the actual controversy between the United States and the States." (Government Brief, 148-149) Since the Government concedes that foreign nations are not concerned, alleged considerations of foreign policy or international law should not be permitted to override the obvious pur-

pose of the Congress and the President to give by this Act recognition to the historic boundaries of the States by measuring the rights in the continental shelf transferred to the States on the basis of these boundaries and thereby settling a controversy that had occupied major parts of several sessions of Congress.

This was a matter which all concede was within the power of Congress, with Presidential approval, to settle as it thought best. There were differences of view in and out of Congress as to what would be wise to do, but Congress and the President have decided that this is the way the controversy should be settled. This settlement ought not be upset now on the basis of considerations of foreign policy that, even by the admission of the Government, will not be affected one way or the other by what this Court decides as to whether the Federal Government or the States shall have judgment for the rights actually in issue in this case.

II.

If international law and a national boundary should be considered, they support, rather than deny, the validity and existence of State Boundaries at three leagues in the Gulf of Mexico.

The preceding part of this brief is based upon the proposition that under the Submerged Lands Act the States' historic boundaries are the measure of the grant and transfer by Congress to the States which this Court upheld in *Alabama v. Texas*, 347 U. S. 272. On this basis there is no need to consider what effect international law might have upon the intent of the Congress in making the transfer or the location of the national boundary.

However, if either international law or the location of the national boundary is relevant for any purpose, the result is to support rather than to destroy the intent of the Congress to transfer to the Gulf Coast States all the submerged lands within their historic or Congressionally-approved boundaries.

A. There was no established international law fixing a maximum three-mile seaward limit during the relevant periods.

1. Universal acceptance by independent states is a prerequisite of international law.

A fundamental postulate of all international law is that the principles composing it have won universal acceptance by all civilized nations. All theories of the law of nations assume the existence of sovereign

independent states bound only by their consent. The requisite consent of a nation must be evidenced by its express agreement or by a course of conduct from which its consent may be clearly implied. History demonstrates that neither by express agreement nor by any universally accepted rule of customary law have the nations of the world ever agreed upon the maximum extent of the territorial sea. Until such a rule is accepted, each nation retains its freedom to determine its own limits. Under these circumstances, the burden of proving that this freedom has at any time been curtailed rests upon the party asserting that fact.

Facing this burden, the Solicitor General contends that no Gulf state could have a boundary located more than three geographical miles from its coast because such a boundary would contravene positive rules of international law.[12] The Government says:

> "If the Act does not 'prejudice' State claims of three-league boundaries, neither does it immunize them from the Government's contention that such boundaries have never had any validity under international law and the law of the United States." Government Brief, 104.

In doing so, the Solicitor General does not distinguish between the concepts of the limit of territorial waters or the marginal sea and the concept of maritime boundaries. He cites authorities relating to the extent of territorial waters on the marginal sea as conntrolling on the location of maritime boundaries. In fact, the two concepts should be distinguished. However,

---

[12] Point I, Government Brief, 27-151.

even the authorities relating to territorial waters and the marginal sea do not fix a maximum seaward limit of three miles.

It is not clear whether Government's counsel is speaking of general international law or merely the State Department's recent and unilateral efforts to establish a comprehensive three-mile limit. How the State Department may have interpreted international law, and how it may have chosen to apply that interpretation in its dealings with other nations, is no more than evidentiary of the content of general international law and must be weighed with corresponding evidence of the contemporary understanding of other independent nations. As Chief Justice Marshall, speaking for this Court, said in *The Antelope*, 10 Wheat. 66, 122:

> "No principle of general law is more universally acknowledged, than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality, that no one can rightfully impose a rule on another . . . As no nation can prescribe a rule for others, none can make a law of nations; . . ."

This was reiterated by the Court in *The Scotia*, 14 Wall. 170, 187:

> "Undoubtedly, no single nation can change the law of the sea. That law is of universal obligation, and no statute of one or two nations can create obligations for the world. Like all the laws of nations, it rests upon the common consent of civilized communities. It is of force, not because it was prescribed by any superior

power, but because it has been generally accepted as a rule of conduct."

For stronger reason, later unilateral assertions of the State Department can not be regarded as establishing general international law as it existed at the dates relevant to this controversy.

Both the requirement of universal consent and the effect of failure to prove its existence (even in the presence of some unilateral assertions) appear in the recent judgment of the International Court of Justice in the *Anglo-Norwegian Fisheries* case:

> ". . . it must therefore be taken that that Government [United Kingdom] has not abandoned its contenion that the ten-mile rule [for determining width of bays] is to be regarded as a rule of international law.
>
> "In these circumstances the Court deems it necessary to point out that *although the ten-mile rule has been adopted by certain States both in their national law and in their treaties and conventions, and although certain arbitral decisions have applied it as between these States, other States have adopted a different limit. Consequently, the ten-mile rule has not acquired the authority of a general rule of international law.*" Fisheries case *(United Kingdom v. Norway)* Judgment of December 18, 1951; I. C. J. Reports 1951, at p. 131.*

The same universal consent rule was uniformly

* In the pages to follow emphasis is supplied unless otherwise noted.

applied by the Permanent Court of International Justice:

> "Now the Court considers that the words 'principles of international law,' as ordinarily used, can only mean international law as it is applied *between all nations belonging to the community of States* . . . In these circumstances it is impossible—except in pursuance of a definite stipulation—to construe the expression 'principles of international law' otherwise than as meaning the principles which are *in force between all independent nations* and which therefore apply equally to all of the contracting Parties." *Case of S. S. "Lotus,"* P. C. I. J., ser. A, No. 10 (1927), pp. 16-17.

While it is true that for many years the United States Department of State has unsuccessfully advocated the establishment of a rule of international law limiting the territorial sea for many purposes to three miles[18] this limit is not now and never has

[18] The fact that the issue of extent has been continuously debated is itself proof that the three-mile limit has never crystalized into a rule of international law. The failure of the Hague Codification Conference in 1930 and the similar failure of the recent Geneva Conference to reach any agreement at all on the width of the territorial sea is conclusive proof that the point debated during 1810-1870 is still undecided. See Resolution 1, Sec. B, Final Act, Hague Conference for the Codification of International Law, League of Nations Document V. 1930, v. 7; 3 Gidel, *Le droit international public de la mer* 141-147 (Paris, 1934); New York Times, April 26, 1958, p. 32. At the recent Geneva Conference the United States was willing to abandon this contention and to agree upon a six-mile territorial sea to be fixed through treaty-making processes of the United Nations. New York Times, April 16, 1958, p. 1. The Secretary of State, as directing authority over the United States delegation at Geneva, thus recognized the freedom of choice of maximum limit still open under the law of nations.

been established by universal acceptance as a positive rule of international law.[14] It was not seriously mentioned by the United States as a maximum limit until long after the Gulf Coast States became members of the Union.[15] Even those nations advocating the adoption by all nations of such a rule recognize special situations in various parts of the world which are exceptions to the claimed general rule.

2. No maximum extent for the territorial sea had achieved universal acceptance at any of the relevant dates.

The dates relevant to this controversy are established by the Submerged Lands Act itself. Section 2(a) (2) of the Act speaks of "the boundary line of each such State where in any case such boundary *as it existed at the time such State became a member of the Union, or as heretofore approved by Congress,* extends . . . into the Gulf of Mexico beyond three geographical miles . . ." 67 Stat. 29. Section 2(b) defines "boundaries" to include the seaward boundaries of a State " . . . *as they existed at the time such State became a member of the Union, or as heretofore approved* by the Congress . . ." 67 Stat. 29.

The statute points to specific events with respect to each Gulf State. In an orthodox trial questions of international law would be established by the testimony of expert witnesses. In this case, Professor

---

[14] 3 Gidel, *Le droit international public de la mer* 141- 52 (Paris 1934).

[15] See pp. 122-28, infra.

Louis B. Sohn[16] of the Harvard Law School and Professor Stefan A. Riesenfeld,[16a] of the University of California School of Law, two of the leading authorities on international law at the present time, have each, at the request of the States, studied this matter and prepared separate extensive memoranda on the subject which are attached as exhibits to this brief. Professor Sohn says:

> "It is a recognized principle of international intertemporal law that 'a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises.' . . .
>
> ". . . in the present case, the legal validity of the acts of the Gulf States by which their boundaries were extended into the Gulf of Mexico would have to be evaluated in the light of the rules of international law which existed in the first half of the nineteenth century. The problems should be apporached in the same way and by the same method as the Supreme Court or an international court would have approached them if it had to decide the issue in the very year in

[16] Professor Sohn, Professor of Law at Harvard, was formerly legal officer in the Secretariat of the United Nations, where he edited the *Laws and Regulations on the Regime of the High Seas* (two volumes published in the United Nations Legislative Series, 1951-52); editor of *Cases on World Law* (1950) and *Cases on United Nations Law* (1956).

[16a] Professor Riesenfeld is Emanuel S. Heller Professor of Law at the University of California, Berkeley, the author of *Protection of Coastal Fisheries under International Law* (Carnegie Endowment for International Peace, Monograph No. 5, 1942), and of numerous articles on international and comparative law in German and American legal periodicals.

which the crucial events transpired, i.e., 1812, 1817, 1819, 1836, 1845, or 1868, as the case may be.

"Consequently, in trying to decide upon the validity or not of each State act, one has to determine first what was the rule of international law applicable to that act at the time that act was enacted or approved. Later authorities can be used only when it is clear that there has been no change either in the rule or its scope, or where a later authority has dealt with the matter from the point of view not of its own time but in a historical manner, in the light of the rules of the period in which the relevant facts occured." Exhibit I, 148-50.

The Government apparently recognizes the applicability of this principle.[17]

By 1790, it was settled international law that a portion of the sea bordering the coast was "territorial" in the modern sense. Coastal states possessed both sovereignty (imperium) and ownership (dominium) within the area, subject only to the rights of innocent passage.[18] There was disagreement then as to the *extent* of imperium and dominium even as

---

[17] Government Brief, 13.

[18] See Summary of Opinions of Jurists and Publicists, 1670-1950, Appendix pp. 18-50, Brief for the State of Texas in Opposition to the Motion for Judgment, *United States v. Texas*, No. 13, Original, October Term, 1949. A complete Summary of such opinions to 1950 appears in 3 Baylor Law Rev. 267-311. See also: Daniel, *Sovereignty and Ownership in the Marginal Sea*, Forty-fourth Conference, International Law Association, Copenhagen, 1950.

there is today.[18] But there was no substantial dispute concerning the rights that the coastal states possessed in the adjacent territorial sea. The correctness of the foregoing statements is established by the treaties, diplomatic correspondence, and the writings of publicists of all nations; particularly relevant statements are quoted below.[20] Professor Riesenfield in his memorandum traces the evolution of international law relating to jurisdiction over the maritime belt from the pre-Grotian era through Eighteenth century theory and practice and the development during the beginning of the Nineteenth Century. See Exhibit II, 197-218.

---

[18] As witness the course of the recent United Nations conference on the law of the Sea, Geneva, February-April, 1958.

[20] Bynkershoek clearly stated the theory in 1702:

"I should think, therefore, that the possession of a maritime belt ought to be regarded as extending just as far as it can be held in subjection to the mainland; for in that way, although it is not navigated perpetually, still the possession acquired by law is properly defended and maintained; for there can be no question that he possesses a thing continuously who so holds it that another can not hold it against his will. Hence we do not concede ownership of a maritime belt any farther out than it can be ruled from the land, and yet we do concede it that far; for there can be no reason for saying that the sea which is under some one man's command and control is any less his than a ditch in his territory." *De Dominio Maris Dissertatio, c. II.*

Lampredi, an Italian, wrote in 1776 as follows:

"'Where a nation has dominium [dominio] it also has imperium [impero] . . . When it is asked whether any part of the sea which washes my coasts or which is surrounded on all sides by my territory can be subjected to my dominium and imperium, we concede that this can be done; since with regard to parts [of the sea] nearly all of the argu-

Secretary Jefferson himself admirably summarized the situation when he wrote to the French Min-

---

ments advanced against the dominium of the sea taken as a whole fall to the ground. . . . On the extent of imperium and dominium of a coastal nation over the sea, the opinions of the jurisconsults are various. To us it seems that any nation can occupy that part of the sea around its coast the use of which is necessary and which is considered necessary to defend the shores and territory, just as we have said. . . . The part of the sea which is occupied by a nation is held as its territory and hence is under its imperium and dominium." *Juris Publici Universalis sive Juris Naturae et Gentium Theoremata*, 31, 59-61, 63-65, 71.

In 1778, in an article entitled "Sea" in the *Dictionaire universel raisonne de justice naturelle et civile*, (Felice ed. 1778), Vol. IX, pp. 226-227, it is said:

"The various uses of the sea near the coast make it very susceptible to ownership. . . .

" . . . These parts of the sea thus subject to a nation are included in its territory; . . .

"It is not easy to determine up to what distance a nation can extend its rights over the sea which borders it. . . . the only reasonable thing that can be said is that, in general, the power of the State over the neighboring sea goes as far as is necessary for its safety and [as far as] it can make it respected, since, on the one hand, it cannot appropriate for itself a common thing; like the sea, except to the extent that it [the nation] needs it for some legitimate end, and, on the other hand, it would be a vain and ridiculous claim to appropriate for oneself a right which one was in no position to enforce."

The Italian Ferdinando Galiani wrote in 1782:

"Finally, it is well established that the edge of the open sea which washes the shore of the land belongs to and is regarded as incorporated with the territory, and forms a part of it. But opinion and practice on the extent of this so-called *mare territoriale* have varied in different centuries.

"The safest thing seems to be that on straight-line coasts, territory extends out in the water as far as the greatest dis-

ister Genet in 1790:

"Sir:

"I have now to acknowledge and answer your letter of September 13, wherein you desire that we may define the extent of the line of territorial protection on the coasts of the United States, observing that Governments and jurisconsults have different views on this subject.

"It is certain that, heretofore, they have been much divided in opinion as to the *distance* from their sea coasts to which they might reasonably claim a right of prohibiting the commitment of hostilities. The greatest distance, to which any respectable assent among nations has been at any time given, has been the extent of the human sight, estimated at upwards of twenty miles, and the smallest distance, I believe, claimed by any nation whatever, is the utmost range of a cannon ball, usually stated at one-sea-league.

---

tance to which a battery installed on land can reach with shell or bombs with effective power. Truly, in accordance with the principles of commonly accepted law, we can call territory all the space up to where the magistrates and public officers can, with the coercion derived from the force entrusted to them, impose the orders of their sovereign.

"However, I am unable to find any public treaty in which this distance has been steadly determined; . . ." *Dei Doveri dei Principi Neutrali* 321 (Milan 1782).

See 2 Guenther, *Europäisches Völkerrecht in Friedenszeiten* 49 (Altenburg, 1787); Rartens G. F. Von, *Précis du droit des gens moderne de l'Europe* 186- 187, Göttingen, 1789). Similar citations can be multiplied, but they are all in agreement.

Some intermediate distances have also been insisted on, and that of three sea-leagues has some authority in its favor. The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margin of protected navigation, as any nation whatever. Not proposing, however, at this time, and without a respectful and friendly communication with the Powers interested in this navigation, to fix on the distance to which we may ultimately insist on the right of protection, the President gives instructions to the officers, acting under his authority, to consider those heretofore given them as restrained for the present to the distance of one sea-league or three geographical miles from the sea shores. This distance can admit of no opposition, as it is recognized by treaties between some of the Powers with whom we are connected in commerce and navigation, and is as little or less than is claimed by any of them on their own coast." 1 *American State Papers (Class I— Foreign Relations)* 183 (Lowrie & Clarke ed. 1832).

The division of opinion as to the extent of the territorial sea continued throughout the period embracing the relevant dates[21] and indeed has continued un-

---

[21] Correspondence between France and Great Britain, 1824-26, 2 H. A. Smith, *Great Britain and the Law of Nations*, 144-64 (London, 1935); Correspondence, Russia and Great Britain, 1836-37, F. O. 181, Embassy & Consular Archives, Correspondence Russia 80, 1829-37; Pinheiro Ferreira, *Compendio de derecho público y externo* 94 (Lima n. d.); Bowyer, *The English Constitution* 44 (London, 1841); 1 Riquelme, *Elementos de derecho público internacional* 209 (*Madrid*, 1849); Heffter, *Das Europäische Völkerrecht der Gegenwart* 139, note 6 (3rd ed. Berlin,

til the present time. Illustrative of the continuing differences is the reply of Count Nesselrode in 1837 to a British claim that three miles was the maximum limit of territorial jurisdiction:"

> "But as to the limits to be set for exercising this jurisdiction, the principles set down in your note of January 13 are such, my dear Count, as to justify a number of objections on the part of the Imperial Cabinet.
>
> "In the first place, as for the distance of three miles established by English legislation, can this be considered a universal principle, authorized by the Law of Nations? We are far from agreeing with this opinion. In fact, if one refers to the authority of the legal writers, one becomes convinced that there has never existed any general rule for determining the jurisdiction that any

---

1855); Pinheiro Ferreira, *Notes to an edition of Vattel, Le Droit des Gens* 262-63 (Paris, 1856); G. F. de Martens, *Précis du Droit des Gens Moderne de l'Europe*, note pp. 144-45 (Vergé ed., Paris, 1858); 1 Saripolos, *Ta tun eonon en eirini kai en polemo nomima* 173 (Athens, 1860); 1 Cauchy, *Le droit maritime international* 150 (Paris, 1862); Huhn, *Völkerrecht* 71 (Leipzig, 1864); Del Bon, *Instituzioni del Diritto Público Internazionale* 83 (1868).

[11] Apparently the genesis of Great Britain's assertions that three miles was a maximum limit of territorial jurisdiction was in the Channel Oyster Fishery dispute with France in 1824. History shows that Great Britain was willing to concede a two-league limit to France in accordance with the latter's domestic laws until it was discovered that the bulk of the oyster beds lay between three and six nautical miles off the French coast. Only then did the British raise their three-mile maximum contention. See the original document reprinted in 2 H. A. Smith, *Great Britain and the Law of Nations*, 144-164 (London 1935).

Power whatever has the right to exercise over the seas off its coasts. Some extend this right to 60 miles out, to the visible horizon, to three leagues; while others claim that its limit is restricted to mere cannon-range.

"On the other hand, if one consults the transactions previously signed between various Powers, one still finds proof of the same diversity of opinion, of the same uncertainty of principle on this question: take for example the Treaty of Paris of 1763, which fixed free fishing rights in the Gulf of St. Lawrence at 3 leagues from the British coasts and at 15 leagues from Cape Breton; or else take the agreements signed by England concerning the Slave Trade, which extended over a zone of 20 leagues repressive measures brought to bear on this traffic.

"Finally, if one invokes the authority of the legislation of specific nations, one becomes convinced that there is an equal lack of general agreement which might authorize an obligatory principle for all Powers in all places. On the contrary, it will be seen that each Government has reserved for itself, by its own authority and [free from any outside pressure] *(sans contrôle)*, its power to legislate on this matter, according to its interests and as it sees fit.

"But if there is one principle on which legal writers and Governments have always agreed, it is that each State has the right and the duty to be guided first and foremost by the demands of its own security." Letter dated March 9, 1837, Nesselrode to Durham, British Foreign Office Records, Embassy and Consular Archives, Russia, F.O. 181, Correspondence 120, 1835-1838, Notes from Ministers.

Other similar controversies have occurred through the years.[23] A careful observer of state practice, writing in 1937, a hundred years after Nesselrode, said:

> "Our investigations show that no sovereign State has fixed its maritime territorial limits after having consulted other States. They have all done so by virtue of their own authority. The fact does not alter the sovereign character of their decisions. Any sovereign state will, as a matter of course, in its practical politics pay regard to eventual conflicts of interest which may arise as a consequence of its sovereign right. But this applies to all matters affecting the community of states, not only the problem of territorial waters; and each state decides for itself the influence such regards shall have upon its own act." Meyer, *The Extent of Jurisdiction in Coastal Waters* 516 (Leiden, 1937).

This freedom of choice possessed by the independent nations of the world has resulted in a variety of domestic statutes fixing territorial jurisdiction,[24] but all efforts to secure universal international agreement upon a maximum limit have been unsuccessful. Near the turn of the last century, and long after the Gulf States became members of the Union, the United States joined Great Britain (both being primarily motivated by national interest in fishing) in endeavoring to obtain the

---

[23] One such controversy, between Great Britain and Norway, extended from the 18th Century until 1951 when the International Court of Justice concluded it adversely to Great Britain in the *Anglo-Norwegian Fisheries* case.

[24] See *Laws and Regulations on the Regime of the Territorial Sea*, U. N. Doc. ST/LGT/SER. B/6, *passim*.

acceptance by other states of a maximum three-mile limit of territorial waters. Both countries continued to recognize exceptions to their claimed general rule. However, the replies of Governments to the questionnaires sent out by the Preparatory Committee of the League of Nations[25] and by the International Law Commission of the United Nations,[26] as well as the failure of both the Hague and Geneva Conferences to reach any agreement at all on the width of the territorial sea are conclusive proof that opinion remains divided just as it was when Jefferson wrote 165 years ago.

Professor Maurice Bourquin[26a] writing in 1952 has admirably summarized the situation:

> "The delimitation of the maritime domain of the State is one of the most confused, the most uncertain parts of international law. 'On this question there reigns a frightful chaos," declared Dr. Schücking at the [Hague] Codification Conference of 1930. At that time it was hoped that a little order might be introduced into [this matter] by means of agreement. But this hope

---

[25] Replies Made by the Governments to the Schedule of Points in *Bases of Discussion Drawn up for the Conference by the Preparatory Committee* Volume II, Territorial Waters, League of Nations Pub. C. 74. M. 39. 1929. V.

[26] Comments by Governments on the Provisional Articles Adopted by the International Law Commission at its Seventh Session in 1955, U. N. Document A/CN. 4/99, and Add. 1 to 9, reprinted in 2 *Yearbook of the International Law Commission* 1956, 87-101.

[26a] Maurice Bourquin, Professor at the University of Geneva and at the Institute Universitaire de Hautes Etudes Internationales; Lawyer for the Norwegian government in the case on fisheries.

was disappointed; and it can be asserted that, far from doing away with the abscurities of the law in force, the Conference, in the last analysis, only made them more serious, by placing in greater relief the profound disagreement in the practice of the States.

"Since that time, the situation certainly has not been clarified. Certain traditional concepts which, in 1930, still enjoyed broad influence are today outmoded by the needs of international society."[26b]

Any unbiased examination of available sources of international law thus conclusively establishes that there is no basis for the Government's claim that at any of the relevant dates there was any universally accepted rule of international law limiting the extent of a nation's territorial jurisdiction to three geographical miles. This has simply remained an area in which no binding rule has evolved, and each nation remained at the relevant dates, even as it now remains, free to choose its own limit based upon the principle of reasonableness which, as Professor Sohn says, has depended "on the circumstances of each case and on the spirit of the times." Exhibit I, 154.

To summarize, the States feel that the Government is completely in error in asserting that the body of civilized nations have ever agreed to a positive rule of international law limiting territorial sovereignty to three miles at sea.

[26b] Bourquin, "La Portée Générale de l'Arrêt Rendu le 18 Décembre 1951 Par La Cour Internationale de Justice Dans l'Affffaire Anglo-Norvégienne des Pêcheries," 22 *Nordisk Tidsskrift for International Ret og Jus Gentium: Acta Scandinavica Juris Gentium* 101 (1952).

3. Three leagues was an accepted limit of the territorial sea, recommended by publicists and used by nations.

An examination of the general law of nations shows that there is no basis for a claim that, at the relevant dates, international law prevented a nation-state from fixing a general seaward limit of territorial jurisdiction three leagues or six leagues from land. Such jurisdiction more than three miles into the Gulf of Mexico and elsewhere was recognized as reasonable, was recommended by many publicists, and was employed in treaty practice. There was no uniform usage which prevented or conflicted with it. In the society of nations of that day, with no supranational authority, a three-league or six-league boundary of territorial jurisdiction in the Gulf of Mexico was entirely proper in the absence of any developed international custom to the contrary.

One of the strongest items of evidence that three *miles* had not become fixed as a maximum jurisdictional limit is found in the fact that three leagues had much authority in its favor. Long before Jefferson, publicists of many nations advocated three leagues as a proper extent of national territorial jurisdiction. These recommendations continued without regard to the range of cannon until well after 1870.

Three leagues was used in the treaty practice of states from 1763 to 1899.

Exhibit IV to the Brief of the State of Texas contains a list in chronological order for the period 1763 to 1890 of numerous references to three leagues as a proper limit of the territorial sovereign-

ty and ownership of the coastal states and the use of that limit in the treaty practice of various states. Representative examples of these statements of publicists and of this national practice follow:

In the Treaty of Paris, 1763, it was agreed that "the subjects of France do not exercise the said Fishery but at the distance of 3 leagues from all the coasts belonging to Great Britain . . ." 1 *British and Foreign State Papers* 422-23.

In 1779 the United States Ministers to Great Britain were instructed that American fishermen were not to be prevented from fishing "excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war. . . ." 3 Wharton, *The Revolutionary Diplomatic Correspondence of the United States* 303 (1889).

On December 4, 1781, the Continental Congress of the United States passed an ordinance establishing what captures on water were lawful:

> " . . . from and after the first day of March, in the year on thousand seven hundred and eighty-two, all goods, wares and merchandise of the growth, produce and manufacture of Great Britain, within three leagues of the coasts and destined to any port or place of the United States, in any ship or vessel belonging to the citizens of the said States, or the subjects of any neutral power, shall be liable to capture and condemnation. . . ." 21 Journal of the Continental Congress 1153 at 1154 (Library of Congress ed. 1912).

In a letter to Edmund Pendleton, of January 8, 1782, Madison refers to this ordinance, mentioning the fact that in it "a clause was inserted exposing to capture all merchandise produced in Great Britain, if coming into these States, and within three leagues of the coast, although the property of a neutral nation." 1 *Writings of James Madison* 167 at 169 (Hunt ed., 1900).

In 1781, Pfeffel wrote "In this regard one distinguishes the high sea from that which washes the coasts of a nation: the first is absolutely free to all nations; the second is deemed to be a part of the territory which it adjoins; this presumption is based on the voluntary law of nations, which has established the rule of three leagues." *Principes du droit naturel*, Bk. III, c. IV., p. 56 (Colmar, 1781).

In the more than 22 editions of Paley, *Moral and Political Philosophy* published from 1785 to 1860 in English, French, and German, there appears: "What is necessary for each nation's safety, we allow; as their own bays, creeks, and harbours, the sea contiguous to, that is, within cannon-shot, or three leagues, of their coast; and upon the principle of safety. . . ." (1785 ed., p. 79).

Jefferson, writing to Genet in 1793, said, "Some intermediate distances have also been insisted on, and that of three sea-leagues has some authority in its favor." 1 *American State Papers (Class 1, Foreign Relations)* 183.

In 1844, Massé noted "A great number of treaties fix this distance at three leagues." *Le Droit Commerical dans ses rapports avec le Droit des Gens* 114 (Paris, 1844).

Esteban de Férrater, writing in 1842, said, "The sea belongs to the State which it washes only so far as a distance of three leagues measured by a line parallel to the coast." 2 *Código de Derecho Internacional* 151 (Barcelona, 1846).

De Bacardi's *Diccionario del Derecho Marítimo de España*, 515 (Barcelona, 1861), under the heading "Mar" (Sea) says, "The result of the above-mentioned controversies accepted by all nations is that the sea which washes its coasts is considered the property of a State to the distance of three leagues in a line parallel to the same [coast]. This is the opinion and principle most widely received though some authors favor the farthest range of cannon shot from the farthest promontory, others the distance of a marine league and others the visible horizon."

Manuel Maria Madielo wrote in 1874: "The doctrine, initiated by England and the United States, of considering as national waters not only those falling within the marine league, or 5,000 metres, mentioned, but also the waters included between the salient points of the coasts, has nothing in it contrary to the sovereignty of independent states; but it would be clearer, more precise and more expeditious to accept as maritime territorial waters those included between low tide on the coast and three leagues offshore; without distinction of capes or promontories which exposes one to arbitrary decisions in the application." *Tratàdo de Derecho de Jentes, Internacional, Diplomatico i Consular* 47 (Bogotá, 1874).

In the treaty between Mexico and Guatemala of September 27, 1882, the boundary line between the

two republics was described as commencing "from a point in the sea three leagues distant from the upper mouth of the River Suchiate." *Foreign Relations of the United States*, 1883, p. 649; House Exec. Doc. 48th Cong., 1st Sess. Cong. Series 2181.

China and Mexico concluded a treaty on December 14, 1899, by which they agreed to consider "a distance of 3 marine leagues, measured from the line of low tide, as the limit of their territorial waters for everything relating to the vigilance and enforcement of the Custom-house Regulations and the necessary measures for the prevention of smuggling." 92 *British and Foreign State Papers* 1057.

Three leagues thus was an accepted limit of a state's territorial sea, recommended by publicists and used by nations. The Government's contention is incorrect that during the period 1812-1870 there existed at any time a positive rule of international law, uniformly understood and uniformly applied by all states, which restricted a coastal state to a maximum limit of three geographical miles.

B. Geographically and historically the Gulf of Mexico presents a special situation in which a three league boundary has been recognized and established.

1. The physical characteristics of the Gulf invite a wide territorial belt.

There are a number of reasons for the growth of the concept of the territorial sea. Perhaps the earliest arose from the necessity for protection of the coast itself from belligerent action. In the days of sailing

ships this provision gave coastal defenses some time in which to prepare for attack and prevented ships from hovering too close to the coast. A second reason, historically, lies in a desire by the coastal state for a monopoly of fishing and related economic activities. A third, and very important reason, particularly in days of privateering, lies in the desire for a path for shipping in which vessels would be under the protection of the coastal state and would not encounter the hazards of the high seas. Where the coast is shallow this makes necessary a wider territorial sea in order to provide deep water for coasting trade vessels. For each of these purposes the depth of the offshore water and its consequent effect on near coast navigation was important in determining the extent to be claimed as a territorial sea.

The historic fact of the shallowness of the water along the Gulf Coast is shown on such charts as were available, and is indicated, for example, by a letter from Lieutenant Commandant Porter to the Secretary of the Navy, dated June 28, 1817, reading in part as follows:

> "I shall leave this on Monday to cruize off the Sabine River; it is reported that attempts will be made to smuggle Slaves into Louisiana from Galveston, and the natural presumption is that they will attempt the Sabine or the Atchafalaya Rivers: the depth of the water off those rivers is very inaccurately represented on the Charts, and it will not be in my power to approach nearer the shore than within 10 miles of the Sabine, and not nearer than 30 off the Atchafalaya."[27] *7 British and Foreign State Papers* 984.

[27] This river is located in Central Louisiana.

The shallowness of the water east of New Orleans appears also to have been brought to the attention of the Congress in the message of the President on March 26, 1822:

> "... In the Gulf, within our limits West of Florida, which has been acquired since these works [fortifications] were decided on, and commenced, there is no Bay or River, into which large Ships of War can enter. As a defense, therefore, against an attack from such Vessels, extensive works would be altogether unnecessary, either at Mobile Point, or at Dauphine Island, since Sloops of War only can navigate the deepest Channel .....
>
> "... The fortification at the Rigolets will defend the entrance by one passage into Lake Pontchartrain and also into Pearl River, which empties into the Gulf, at that point. Between the Rigolets and Mobile Bay, there are but two Inlets, which deserve the name, those of St. Louis and Pascagola, the entrance to which is too shallow even for the smallest Vessels; and from the Rigolets to Mobile Bay, the whole Coast is equally shallow affording the depth of a few feet of water only. Cat Island, which is nearest the Rigolets, is about 7-1/2 miles distant from the Coast, and 30 from the Rigolets. Ship Island is distant about 10 miles from Cat Island, and 12 from the Coast. Between these Islands and the Cosat, the water is very shallow." 9 *British and Foreign State Papers* 828-29.[18]

[18] See also Report of United States Secretary of the Navy, December 6, 1830, 18 *British and Foreign State Papers* at 1403, that only shallow-draft vessels were suitable for navigation along the coasts of Florida and the Gulf of Mexico.

As late as 1840 the entrances to Galveston were not well known, and an article was published in *The Nautical Magazine* in London describing more particularly the method of entrance into Galveston Bay:

> "Galveston has, heretofore, on account of its being low land, been found difficult to make; but now that we have upwards of 3000 houses, many of them are so lofty, that, from the masthead of a vessel, they may be distinctly seen at a distance of 20 miles, it is easily made. Vessels, however, of heavy draught, should not approach the bar nearer than six fathoms; . . ." *The Nautical Magazine and Naval Chronicle for 1840* 393 (London, 1840).

So during the relevant period the houses at Galveston were visible at a distance exceeding three leagues, or nine geographic miles, and hence a three-league boundary would be reasonable under the visible horizon rule advocated by some publicists of the period.[29] The International Court of Justice, in the *Anglo-Norwegian Fisheries* case, noted that the area claimed by Norway was within the range of vision of the shore. I.C.J. Reports 1951 at 127.

These physical characteristics of the Gulf of Mexico encouraged and made advisable wide claims to a territorial belt in the sea in order that the reasons for such a marginal area could be satisfied.

---

[29] See: Rayneval, *Institutions du Droit de la Nature et des Gens* 161 (Paris, 1803); 2nd ed., Paris 1832; Spanish ed., M. López, 1821.

2. *The United States has established historical seaward boundaries in the Gulf of Mexico at three leagues.*

Congress was not being frivolous in recognizing historic boundaries in the Gulf of Mexico.

Spain, France, and Great Britain each during her respective period of sovereignty in the Gulf, maintained dominion and control over the waters and submerged lands appurtenant to and forming a part of her possessions. One of the first significant acts of possession of this area was the proclamation of La-Salle in 1682 in which he claimed, by virtue of discovery, title to all the area south of the mouth of the Mississippi River including "the seas, harbours, ports, bays, and adjacent straits."[30]

Control of all of the remaining coasts of the Gulf of Mexico was then in the hands of Spain. When France ceded all it had claimed in Louisiana, both land and water area, to Spain in 1762,[31] Spanish possessions surrounded the Gulf. Spain shortly ceded the Floridas ("all that Spain possessed on the North American continent, South and South East of the Mississippi River") to Great Britain in 1763.[32]

Florida's original Gulf boundaries were proclaimed by King George III on October 7, 1763 as "including all islands within six leagues of the coast."[33]

---

[30] *The Louisiana Purchase* 4 (Washington, 1955).

[31] Cantillo, *Tratados de Paz y de Comercio desde el año de 1700 hasta el día* 485 (Madrid, 1843).

[32] Article XX, Treaty of Paris, February 10, 1763, 1 de Martens, *Recueil de Traités de l'Europe* 116 (2d ed. 1817).

[33] *American State Papers*, 5 Public Lands 756 (Lowrie & Clarke's ed. 1832).

Great Britain retroceded the Floridas to Spain in 1783.[34] Once more Spain controlled all the surrounding coasts and treated the Gulf of Mexico as her closed sea as she had prior to La Salle's discoveries. As the Spanish minister, Le Onis, said:

> "... Spain was established as the mistress and possessor of all that coast and territory, and .... she never permitted foreigners to enter the Gulf of Mexico, nor any of the territories lying around it, having repeated the royal orders by which she then enforced the said prohibition, and charged the Spanish viceroys and governors with the most strict observance of the same ....
>
> "... These dominions and settlements [in Mexico and New Mexico] of the Crown of Spain were connected with those which she had on the Gulf of Mexico, that is to say, with those of Florida and the coasts of the province of Texas, which being on the same Gulf must be acknowledged to belong to Spain, since the whole circumference of the Gulf was hers; which property, incontestably acquired, she had constantly maintained among her possessions, not because she occupied it throughout its whole extent, which was impossible, but on the principle generally recognized, that the property of a lake or narrow sea, and that of a country, however extensive, provided no other Power is already established in the interior, is acquired by the occupation of its principal points."[35]

---

[34] Article V, Treaty of Versailles, 3 de Martens, *Recueil de Traités de l'Europe* 544 (2d ed. 1817).

[35] Letter Don Luis de Onis, Spanish minister to the Secretary of State, January 5, 1818, 4 American State Papers (Class I—Foreign Relations) 455-456 (Lowrie & Clarke's ed. 1832).

In 1800 Spain retroceded to France the same territory she had acquired from her in 1762,[36] thus returning to France intact the area of sea (as well as land) claimed by LaSalle which Spain had held during the interim as part of her inland sea.

France ceded Louisiana to the United States in 1803;[37] and when the territory of Orleans was created [38] Congress recognized the area as that first discovered and claimed for France by LaSalle; indeed, as the same area that Spain claimed and possessed before the retrocession. Thus, we find continuous jurisdiction, control, and dominion exercised by prior sovereign powers in the Gulf of Mexico from a period antedating, and certainly from, the time of LaSalle's proclamation.

The acts creating the territory of Orleans, authorizing the formation of a state government and admitting Louisiana into the Union [39] plainly recognize the territory involved as including waters and submerged lands extending from the coast more than three miles into the Gulf of Mexico. Congress could not and did not ignore the historical acts of possession, control, and dominion exercised by France, Spain, and Great Britain for more than a hundred years. It did not fail to claim territory held by its predecessors in the chain of title.

Under the treaty of acquisition the United States was obligated to hold the Louisiana territory in

---

[36] Article 3, Treaty of San Ildefonso, October 1, 1800, Cantillo, *Tratados de Paz y de Comercio* 692 (Madrid, 1843).

[37] Treaty of Paris, April 30, 1803, 8 Stat. 202.

[38] 2 Stat. 283.

[39] 2 Stat. 283, 641, and 701.

trust for new states to be formed from that territory. Louisiana in 1812 became the first of the five Gulf States to enter the Union.[40] Mississippi in 1817 was next, closely followed in 1819 by Alabama. The Enabling Act of Mississippi,[41] the Alabama Territory Organic Act,[42] the Alabama Enabling Act,[43] and the respective acts of admission[44] described the southern boundaries of these states as "including all islands within six leagues of the shore." Therefore, Congress recognized, confirmed and established territorial jurisdiction in excess of three miles into the Gulf of Mexico on seven occasions in order to perpetuate the seaward boundaries of these three Gulf Coast States.

But this was only the beginning of the obvious congressional effort to perpetuate a Gulf boundary greater than three miles. In 1819 in a treaty between the United States and Spain the course of the boundary line was fixed "in the sea" off the mouth of the Sabine River.[45] This boundary was re-affirmed in an 1828 treaty with Mexico.[46]

---

[40] The Louisiana Enabling Act of February 20, 1811 (2 Stat. 641) and the Act of Admission of Louisiana on April 8, 1812 (2 Stat. 701) described its boundaries " . . . to the Gulf of Mexico . . . including all islands within three leagues of the coast."

[41] Act of March 1, 1817, 3 Stat. 348.

[42] Act of March 3, 1817, 3 Stat. 371

[43] Act of March 2, 1819, 3 Stat. 489.

[44] Act of Admission of Mississippi, December 10, 1817, 3 Stat. 348. Act of Admission of Alabama, December 14, 1819, 3 Stat. 608.

[45] 8 Stat. 252.

[46] 8 Stat. 372.

In 1836 the Congress of the Republic of Texas passed a boundary act providing:

> "Beginning at the mouth of the Sabine River, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande . . ." 1 *Laws, Republic of Texas* 133; 1 *Gammel's Laws of Texas* 1193-94.

On March 1, 1837, Congress recognized the independence of Texas[47] in compliance with the message of President Jackson to the Congress of December 22, 1836, in which he stated that "the title of Texas to the territory which she claimed is identical with her independence."[48] The claimed boundary was known to the State Department and to Congress when recognition was accorded. Yet during the entire life of the Republic no protest of any kind was made concerning it.

On April 25, 1838, the United States entered into a convention with the Republic of Texas for the marking of the boundary between the two nations.[49] Hunter Miller's notes to this treaty,[50] drawn from the official records of the State Department, indicate that both governments recognized the boundary as extending three leagues in the Gulf.

Speaking of the Republic of Texas, Daniel Webster, then Secretary of State, wrote the American

---

[47] Cong. Globe, 24th Cong. 2d Sess. 270.

[48] Cong. Globe, 24th Cong. 2d Sess. 45.

[49] 8 Stat. 511.

[50] 4 Miller's *Treaties and Other International Acts of the United States of America* 435-36. (Washington, 1934).

Minister in Mexico, on June 23, 1842, in part as follows:

> ". . . *Her limits are defined* and peace, with an opportunity of improving her resources are much more important to her than any chances of territorial acquisition." 1 Moore, *International Law Digest* 448, 449 (1906); 8 Manning, *Diplomatic Correspondence of the United States, Inter-American Affairs, 1831-1850* at 108-09 (Washington, 1937).

In 1845, Texas was admitted to statehood by joint resolutions of the Congresses of the two republics.[21] No complaint concerning this three-league boundary was made by the State Department at any time during the whole proceedings in the United States Congress, and not a single word was said in the debates in either House that indicated in any way that the Executive Department believed the seaward boundary of Texas to be a matter of controversy or contrary in any way to international law.

Incident to the annexation Congress considered and saw no objection to the 1845 Texas Constitution, which provided that all property rights "which have been acquired under the Constitution and laws of the Republic of Texas, shall not be divested", and which also maintained in effect all laws of the Republic ex-

---

[21] Joint Resolution of the Congress of the United States, March 1, 1845, 28th Cong., 2d Sess., 5 Stat. 797; Joint Resolution of the Congress of Texas, June 23, 1845, 2 *Gammel's Laws of Texas* 1225; Joint Resolution of the Congress of the United States, December 29, 1845, 29th Cong., 1st Sess., 9 Stat. 108.

cept as subsequently modified by amendment or the United States Constitution."[32]

In 1848 the Treaty of Guadalupe-Hidalgo was negotiated with Mexico by the Executive and ratified by the Senate. Here is perhaps the most clear-cut recognition of the Gulf of Mexico as a special boundary situation. Article V provided:

> "The boundary line between the 2 Republics shall commence in the Gulf of Mexico, 3 leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river . . . thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean." 9 Stat. 926.

Professor Sohn points out in his memorandum annexed to the separate brief of the State of Texas:

> "That this description of the beginning of the United States boundary (three leagues from land) was not accidental is confirmed by the fact that this phrase was already included in Article 4 of the first American draft of the proposed treaty of April 15, 1847. [*Ibid.*, p. 265.] The Mexican instruction of December 30, 1847, provided similarly that the dividing line between the two Republics shall begin 'in the Gulf of Mexico at a distance of three leagues from the

[32] Congressional Globe, 29th Cong., 1st Sess., 4, 30, 38, 39, 65, 92, 96; Texas Const. 1845, Art. VII, Sec. 20, Art. XIII, Sec. 2, 2 *Gammel's Laws of Texas* 1293-94, 1299.

land at a point opposite the mouth of the Rio Bravo del Norte'. [*Ibid.*, p. 299.] In view of the unanimity on this point, this provision did not give rise to any difficulties in the negotiations, and all the other drafts contain the phrase that the boundary shall commence in the Gulf of Mexico "three leagues from land". [*Ibid.*, pp. 270, 288, 315, 316, 317, 325.] Only the Mexican draft of January 3, 1848, provided simply that the boundary should extend "to the sea", but this draft was immediately abandoned. [*Ibid.*, p. 316.]" Exhibit I to Brief of the State of Texas.

This treaty constitutes one of the most important territorial treaties in American history. Most of the western portion of the United States was acquired by its terms; it fixed the whole of the present boundary between the United States and Mexico, except as that boundary was later somewhat altered by the Gadsden Purchase. This boundary commenced in the Gulf "three leagues from land," but at the Pacific end it terminated on the coast of "the Pacific Ocean" —not three leagues from land.

In a note dated April 30, 1848, the British Government complained that Article 5 of the Treaty of Guadalupe-Hidalgo constituted an "assumption of Jurisdiction on the part of the United States and Mexico, over the Sea, beyond the usual limit of one Marine League (or three geographical miles), which is acknowledged by International Law and Practise as the Extent of Territorial Jurisdiction, over the Sea that washes the Coasts of States."[88] The British

[88] 7 Manning, *Diplomatic Correspondence of the United States, Inter-American Affairs, 1831-1860*, Document 2858, p. 294.

Government declared that it could not acquiesce in this. Upon receipt of this communication, Secretary of State James Buchanan informed the American Minister to Mexico of the British complaint and stated:

> "To this I shall answer civilly, that the stipulation can only affect the rights of Mexico and the United States, and for this reason third parties can have no just cause of complaint."[54]

Accordingly, the British Government was informed that "the stipulation in the treaty can only affect the rights of Mexico and the United States. If for their mutual convenience it has been deemed proper to enter into such an arrangement, third parties can have no just cause of complaint. The government of the United States never intended by this stipulation to question the rights which Great Britain or any other power may possess under the law of nations."[55] In so replying, Buchanan did not abandon the treaty provision, but merely "civilly" informed Great Britain that he did not choose to debate with Great Britain at that time the question of what rights Britain "may possess" under the law of nations. Despite the British protest, Mexico ratified the treaty on May 30, 1848, and ratifications were exchanged on that

---

[54] Letter from James Buchanan to Nathan Clifford, August 18, 1848, VIII *Works of James Buchanan* 173 (Moore ed., 1909).

[55] 7 Manning, *Diplomatic Correspondence of the United States, Inter-American Affairs 1831-1860*, at 32, Document 2687).

date between the two nations. The President proclaimed the treaty officially on July 4, 1848." *No other member of the family of nations made any protest with reference to this three-league boundary.*

In 1853 the Gadsden Treaty with Mexico, negotiated by the President and ratified by the Senate, provided:

> "The limits between the two Republics shall be as follows:
>
> "Beginning in the Gulf of Mexico three leagues from land opposite the Mouth of the Rio Grande, as provided in the 5th Article of the Treaty of Guadalupe Hidalgo." (10 Stat. 1031).

Great Britain did not renew her protest when this treaty was concluded, and she has not protested any subsequent reaffirmance of that boundary by the two countries.

In the summer of 1853, the United States Commissioners surveyed the boundary pursuant to a series of appropriation acts of Congress (10 Stat. 17, 94, 149, 209, 296, 568 and 661) and with the assistance of the Coast Survey traced "the boundary as the treaty required 'three leagues out to sea' "[58a]

In 1856, the Presidential Proclamation of the Mexican Boundary stated the dividing line as follows:

> "Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the

---

[58] 9 Stat. 922; 5 Miller, *Treaties and Other International Acts of the United States of America* 207 (Washington, 1937).

[58a] 1 Emory, *Report on the United States and Mexican Boundary Survey* 58 (Washington, 1857); Sen. Ex. Doc. No. 108, 34th Cong., 1st Sess.

> Rio Grande, as provided in the Vth Article of the Treaty of Guadalupe Hidalgo; thence, as defined in the said Article up the middle of that river . . ." 11 Stat. 793.

In 1868 Florida's Constitution, adopted after the Civil War and approved by Congress that same year, provided:

> "The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the river Perdido; from thence straight to the head of the St. Mary's river; then down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land, to a point west of the mouth of the Perdido river; thence to the place of beginning." Fla. Laws 1868, 193, 195; 25 Fla. Stat. Ann. 411, 413.

In 1884, the International Boundary Convention between the United States and Mexico provided:

> "The dividing line shall forever be that described in the aforesaid Treaty [of Guadalupe Hidalgo] . . . ." 24 Stat. 1012.

These treaties have been reaffirmed and readopted on numerous occasions with amendments:

Boundary Convention of July 29, 1882, 22 Stat. 986;

Note

Map referred to in footnote on page 103 is on Card 23, at top right. It is identical to the map in Brief 30 except that it is more illegible.

Boundary Convention of November 12, 1884, 24 Stat. 1011;

Boundary Convention of February 18, 1889, 26 Stat. 1493;

Boundary Convention of March 1, 1889, 26 Stat. 1512;

Convention for Boundary Survey of August 24, 1894, 28 Stat. 1213;

Boundary Convention of October 1, 1895, 29 Stat. 841;

Convention Relative to Water Boundary, November 6, 1896, 29 Stat. 857;

Water Boundary Convention, November 21, 1900, 21 Stat. 1936;

Convention for Elimination of Bancos in the Rio Grande, March 20, 1905, 35 Stat. 1863.

None of these re-affirmations has fixed a three-*mile* boundary in the Gulf of Mexico, and all of them have recognized the boundary fixed in the Treaty of Guadalupe Hidalgo.

The International Boundary Commission was established by the Congress of both Republics in compliance with the treaties of 1884, 1889, and 1900, and the Commission proceeded to make the required survey of "The International Boundary Line." This survey unmistakably shows that the international boundary begins three leagues from land and opposite the mouth of the Rio Grande."[57]

[57] A reduced copy of the map is here appended. Source Map Sheets 29 and 30 of "Department of State—Proceedings of the International Boundary Commission United States and Mexico . . . Joint Report of the Consulting Engineers on Field Operations of 1910-1911 American Section.." (Department of State, 1913).

On August 30, 1935, Mexico amended its Law of Immovable Properties to provide that the territorial waters should extend to a distance of nine nautical miles, beginning from the mark of the lowest tide on the coast of the mainland or on the shores of the islands forming part of the national territory. The Department of State of the United States protested this boundary on March 7, 1936, and was reminded by the Mexican Foreign Office that the territorial waters of Mexico as well as those of the United States had been fixed by the Treaty of Guadalupe Hidalgo at nine nautical miles. The Department of State reply on May 23, 1936, admitted that Mexican territorial waters extended three leagues from land in the Gulf of Mexico by virtue of the terms of the Treaty of Guadalupe Hidalgo, and limited the protest to that portion of the coasts of Mexico which bordered on the Pacific Ocean. The reply states:

> "The treaty provisions (Art. V of the Treaty of 1848) in question read as follows:
>
> "' The dividing line between the two Republics shall begin in the Gulf of Mexico, three leagues from land at the mouth of the Rio Grande. . . .
>
> "The Foreign Office has not taken into account the remaining words of the paragraph from which the quotation is taken, which words delimit the boundary line between its eastern end of the Gulf of Mexico and its western end which is said to be 'the Pacific Ocean.' It will be observed that the Western limit of the boundary

line is not stated to be 'three leagues from land.' . . .

"Wholly aside from the question of the boundary line between the two countries, there remains to be considered the total great extent of the Mexican Coast and the bordering territorial waters. To say that because the United States agreed that in one area, so far as the United States was concerned, Mexican territorial waters extended three leagues from land, therefore Mexico was entitled to claim such an extent of territorial waters adjacent to her entire coast line is an unwarranted deduction from the terms of Article V of the Treaty of 1848." 1 Hackworth, *Digest of International Law* 640-41.

Certainly Congress, in considering the Submerged Lands Act, was cognizant of the cited acts of recognition, ratification and establishment of a seaward boundary in the Gulf of Mexico far in excess of three miles. The failure of the Department of State to make any protest of the boundary in the Gulf of Mexico was evident. Plainly Congress recognized and declared that the Gulf of Mexico was characteristically different from the Atlantic and Pacific Oceans. The Submerged Lands Act carried forward the previously recognized historic boundaries of the Gulf States. Congress did not depart from any practice, or do anything new; it merely endorsed boundaries which had been established long before.

The Outer Continental Shelf Act (approved by Congress August 7, 1953), which is in pari materia with the Submerged Lands Act, applies only to lands "lying seaward and outside the lands beneath na-

vigable waters," as defined in Section 2 of the Submerged Lands Act, which provides in part as follows:

> "2(b) . . . but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, *or more than three marine leagues into the Gulf of Mexico.*"

The emphasis is supplied, but the distinction is that of the Congress.

The Outer Continental Shelf Act and the Submerged Lands Act therefore constitute positive recognition by Congress of the special situation in the Gulf of Mexico created by both geography and history. Congress did permit three mile boundaries for the States fronting on the Atlantic and Pacific Oceans but specifically refused to fix a three mile boundary for the Gulf of Mexico. Instead, it gave recognition to historic boundaries extending greater distances than three miles in the Gulf.

With sixteen separate Acts of Congress and twelve treaties and conventions and one Presidential Proclamation, referring to seaward boundaries in the Gulf in excess of three miles, the Defendants wonder just how many acts of Congress and how many treaties it would take to establish an historical boundary under the Submerged Lands Act, if these do not do so. The Treaty of Guadalupe Hidalgo and the Acts of Congress are historical facts which cannot be brush-

ed aside, as the Government seeks to do in this case, for they are some of the historical facts which Congress had in mind in passing the Submerged Lands Act.

3. Executive foreign policy from 1779 to 1890 with respect to the breadth of territorial waters does not conflict with these three-league boundaries in the Gulf of Mexico.

The Solicitor General contends that, from Jefferson's pronouncement in 1793, the Executive Branch of the Government has uniformly adhered to the position that a positive rule of international law establishes three miles as the maximum boundary. In support of this proposition he has cited extracts from American diplomatic correspondence occurring for the most part *after* 1868 and at a time when it was, as it now is, to the self-interest of the United States to explain away its previous practice.

In assessing this contention, it must be remembered that implicit reliance cannot be placed upon diplomatic correspondence as expressive of international law. Such correspondence is often carried on in a routine manner by departmental employees; except in unusual circumstances no extensive research goes into its preparation. In any event, the correspondence remains the brief of an advocate in a particular controversy at a particular time. It does not purport to be an independent, impartial determination of the existing state of international law.

The danger of accepting such correspondence at full face value has been clearly pointed out:

> "Nothing is more fallacious than the positivistic tendency very prevalent at the present day to glean rules of international law direct from the statements of the governments of the individual states, i.e., from diplomatic notes, from treaties, from statements made at conference. Such a proceeding confuses the interested statement made by one party with the rule of legal system. The simple fact that it not seldom happens that with regard to one legal question different states have made contradictory statements and that one and the same state according to circumstances, has adopted varying standpoints in the same matter, shows how misleading such a method is." Bruns, *Fontes Juris Gentium*, Series A, Sec. I, Part I at xxi-xxii (Leipzig, 1931).[57a]

> ". . . [M]ere extracts from state papers or judicial decisions can not be safely relied on as guides to the law. They may indeed be positively misleading. Especially is this true of state papers, in which arguments are often contentiously put forth which by no means represent the eventual view of the government in whose behalf they were employed." 1 Moore, *Digest of International Law* iv (Wash. D.C., 1906.)

[57a] Quoted with approval in United Nations Secretary General's Memorandum, *Ways and Means of Making the Evidence of Customary International Law More Readily Available* 25 (U. N. Doc. A/CN. 4/6, 7 March 1949).

The Government in this case implies that the few extracts it cites from the diplomatic correspondence of the United States represent not only a fair analysis of the foreign policy at the relevant dates but also an authoritative exposition of general international law. Instead, it presents only a partial picture of the actual diplomatic correspondence of the State Department. Even with respect to the items that are mentioned, it completely ignores the circumstances that called forth the particular utterance.

A careful analysis of the development of United States foreign policy demonstrates that neither the diplomatic practice, as evidenced by State Department correspondence, nor the pronouncements of the Congress (as has been shown), of this Court, or of leading textwriters, is consistent with the assertion of any rule of international law limiting the United States, or any other coastal state of the world at the relevant dates, to a territorial claim of three geographical miles.

A State Department policy of contending for a maximum of three miles cannot fairly be said to have become anything like consistent until after the decision of the Arbitral Tribunal in the Bering Fur Seal Arbitration in 1893. Until then, the various Secretaries of State carefully related their policy pronouncements to the matter at hand and did not write so as to foreclose the United States from asserting broader territorial claims if it should appear in its interest to do so. The Gulf States were admitted to the Union or had their boundaries approved by the Congress long before this time.

For convenience, executive policy during this period can be considered under four headings: (a) the early tentative declarations of a neutrality zone by Jefferson in response to the demands of the French; (b) the Canadian fisheries disputes; (c) the annexation of Texas and the Treaty of Guadalupe Hidalgo; (d) executive policy after 1855 until the Bering Fur Seal Arbitration.

(a) Early tentative declarations of a minimum one-sea-league or cannon-shot neutrality zone did not fix the extent of the territorial waters of the United States.

On May 14, 1793, Attorney General Randolph, in response to a request from Secretary of State Jefferson, rendered an opinion holding a French seizure in Delaware Bay to be illegal. He said in part:

> "From a question originating under the foregoing circumstances, is obviously and properly excluded every consideration of a dominion over the *sea*. The solidity of our neutral right does not depend, in this case, on any of the various distances claimed on that element by different nations possessing the neighboring shores; ... For the *necessary* or *natural* law of nations, unchanged as it is, in this instance, by any compact or other obligation of the United States, will, perhaps, when combined with the treaty of Paris in 1783 justify us in attaching to our coast an extent into the sea beyond the reach of cannon shot...." 1 *American State Papers*

(Class I, Foreign Relations) 148-49 (Lowrie & Clarke ed. 1839).[58]

But the French Minister insisted that the United States establish a definite policy, applicable to its coast as well as to bays. Accordingly, after a meeting of the Cabinet, Jefferson wrote to Genet, the French Minister, on November 8, 1793, in part as follows:

> ". . . . Not proposing, however, at this time, and without a respectful and friendly communication with the Powers interested in this navigation, to fix on the distance to which we may ultimately insist on the right of protection, the President gives instructions to the officers, acting under his authority, to consider those heretofore given them as restrained for the present to the distance of one sea-league, or three geographical miles from the sea shores.
>
> "Future occasions will be taken to enter into explanations with them, as to the ulterior extent to which we may reasonably carry our jurisdiction."[59] 1 *American State Papers (Class*

---

[58] This opinion was transmitted to the French Minister on May 15, and on May 27 the French Minister Genet advised that he had surrendered the prize in accordance with the opinion of the United States that the seizure was illegal. See Letter, Mr. Jefferson to Mr. Ternaut, May 15, 1793, 1 *State Papers and Public Documents of the United States* 69, 70 (3rd ed., Wait 1819), and Letter, Genet to Jefferson, May 27, 1793, *id.* at 77, 80.

[59] A parallel letter was sent also to the British Minister and similar letters were apparently sent to the Netherlands and Spanish representatives on the same date. These letters in draft form were shown to the Attorney General, to Alexander Hamilton, and to General Knox and were approved before they were sent. 6 *Writings of Thomas Jefferson* 441-42 (Ford ed. 1895). All of these actions were approved at a cabinet meeting on November 23, 1793. (*Id.* at 452).

I, Foreign Relations) 183 (Lowrie & Clarke ed. 1839).

Jefferson's declaration spoke of both maximum and minimum distances, and in response to the demands of the French Minister, hit upon three geographical miles as the distance to be applied in the controversy then at hand, most expressly reserving for the future the matter of an ultimate seaward boundary. John Quincy Adams reports in his diary a conversation he had with Jefferson on November 30, 1805, after Jefferson had become President, in which the provisional nature of the three-mile zone was again emphasized:

> "Washington, [November] 30th— . . . The President mentioned a late act of hostility committed by a French privateer near Charleston, South Carolina, and said that we ought to assume as a principle that the neutrality of our territory should extend to the Gulf Stream, which was a natural boundary, and within which we ought not to suffer any hostility to be committed. Mr. Gaillard observed that on a former occasion in Mr. Jefferson's correspondence with Genet, and by an Act of Congress at that period, we had seemed to claim the usual distance of three miles from the coast; but the President replied that *he had then assumed that principle because Genet by his intemperance forced us to 'fix on some point,' and we were not then prepared to assert the claim of jurisdiction to the extent we are in reason entitled to;* but he had then taken care expressly to reserve the subject for future consideration, with a view to this same doctrine for which he now con-

tends. I observed that it might be well, before we ventured to assume a claim so broad, to wait for a time when we should have a force competent to maintain it. But in the meantime, he said it was advisable *to squint at it.* [emphasis in original] and to accustom the nations of Europe to the idea that we should claim it in future. The subject was not pushed any farther." 1 *Memoirs of John Quincy Adams* 375, 376 (Adams ed. 1874).

Furthermore, Jefferson displayed his own understanding of the tentative nature of his earlier declaration by reporting to Congress on December 3, 1805, that he had ordered the arrest of all vessels "found hovering on our coasts *within the limits of the Gulf Stream.*" 1 *American State Papers (Class I, Foreign Relations)* 66 (Lowrie & Clarke ed. 1832).

So the 1793 Jefferson declaration, tentatively setting a three-mile neutrality limit as a politically expedient answer to a difficult problem, but expressly recognizing the authority in favor of a three-league boundary,[40] and reserving the whole matter for future decision, does little to aid the Government's cause.

But the Solicitor General next points to Section 6 of the Neutrality Act of June 5, 1794, (1 Stat. 381, 384) which provides that

". . . . the district court shall take cognizance of complaints by whomsoever instituted, in

[40] The authorities set forth above pp. 84-88 and in Exhibit IV to Brief for the State of Texas conclusively demonstrate the correctness of his statement.

cases of captures made within the waters of the United States or within a marine league of the coast or shores therefrom."

This act, arising out of the same controversies which prompted the Jefferson-Genet correspondence, merely implemented the Government's provisional policy and does not fix a marine league as the maximum distance claimed, or even as the maximum distance claimed for neutrality purposes. Furthermore, as Professor Sohn has noted:

> "While the Neutrality Act of 1794 conferred jurisdiction upon the district courts to take cognizance of 'captures made within a marine league of the coast or shores thereof', the Customs Acts of August 4, 1790, and March 2, 1799, imposed various duties on foreign vessels arriving 'within four leagues of the coast' of the United States and authorized customs officers to examine and search such vessels. [I Stat. 145, at 164, 175, and 627, at 648, 700.]" Exhibit I, p. 164.

In Article 25 of the Jay Treaty of November 19, 1794, the United States and Great Britain each agreed not to permit the other's ships to be seized within cannon shot of their respective coasts. This specific agreement is in conformity with Jefferson's letter to Genet, in which he remarked that "the utmost range of a cannon ball" is "usually stated at one sea-league." Of course, to the extent that cannon range varied from this distance, these "cannon-shot"

treaties do not support the Government's claim of an inflexible three-mile policy."[21]

The limited purpose of these measures continued to be pointed out. For example, on September 2, 1796, the Secretary of State replied to a complaint of a seizure by a British vessel at an indefinite distance from shore by stating that the United States could not interfere, but could only exhibit the papers to the British Minister, pointing out that:

> "Our jurisdiction. . . . has been fixed *(at least for the purpose of regulating the conduct of the government in regard to any events arising out of the present European War)* to extend three geographical miles (or nearly 3-1/2 English miles) from our shores; . . ." 1 Moore, *Digest of International Law* 704 (1906).

Far from constituting an assertion of an established rule of international law, this letter carefully re-asserts the limited and provisional nature of the policy being formulated by the United States.

This understanding of a minimum distance for neutrality purposes was again stated on February 3, 1807, by Secretary of State James Madison in his

---

[21] The cannon-shot zone for neutrality purposes was carried forward in the May 8, 1800, draft of Article XIX of a treaty with France (5 *British and Foreign State Papers* 72); in Article XI of the treaty with Algiers concluded June 30, 1815, (8 Stat. 224); in Article XI of another treaty with Algiers, dated December 23, 1816, (8 Stat. 244); and in Article X of the Treaty with Morocco of September 16, 1836, (8 Stat. 484).

instructions to the United States Ministers negotiating with Great Britain:

> "There could surely be no pretext for allowing less than a marine league from the shore, that being the narrowest allowance found in any authorities on the law of nations. If any nation can fairly claim a greater extent, the United States have pleas which cannot be rejected; and if any nation is more particularly bound by its own example not to contest our claim, Great Britain must be so by the extent of her own claims to jurisdiction on the seas which surround her." 3 *American State Papers (Class I, Foreign Relations)* 153, 155 (Lowrie & Clarke ed, 1832).

The same view was ably expressed by Chancellor Kent in 1826 in the first edition of his *Commentaries on American Law* at pages 29-30:

> ". . . . Considering the great extent of the line of the American coasts, we have a right to claim for fiscal and defensive regulations, a liberal extension of maritime jurisdiction; and it would not be unreasonable, as I apprehend, to assume, for domestic purposes connected with our safety and welfare, the control of the waters on our coasts, though included within lines stretching from quite distant headlands, as, for instance, from Cape Ann to Cape Cod, and from Nantucket to Montauck Point, and from that point to the capes of the Delaware, and from the south cape of Florida to the Mississippi. It is certain that our government would be disposed to view with some uneasiness and sensibility, in the case of war between other maritime pow-

ers, the use of the waters of our coast, far beyond the reach of cannon shot, as cruising ground for belligerent purposes. In 1793, our government thought they were entitled, in reason to as broad a margin of protected navigation, as any nation whatever, though at that time they did not positively insist beyond the distance of a marine league from the sea shores; and, in 1806, our government thought it would not be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well defined path of the Gulf Stream, to expect an immunity from belligerent warfare, for the space between that limit and the American shore. At least it ought to be insisted, that the extent of the neutral immunity should correspond with the claims maintained by Great Britain around her own territory, and that no belligerent right should be exercised within 'the chambers formed by headlands, or anywhere at sea within the distance of four leagues, or from a right line from one headland to another.'"

Kent's treatise became standard and, though revised several times by the author, this general statement of the law appears without change in the editions of 1832, 1836, 1840, 1844, 1848, 1851, 1854, 1858, 1860, and 1866. This view is adopted by George Sharswood in his notes to Blackstone, *Commentaries on the Laws of England*, Vol. 1, p. 109, note 14 (Sharswood ed., Phila. 1860).

Both the State courts and this Court recognize the minimal character of the three-mile claim before

1893. So, in *The Hungaria*, 41 Fed. 109, at 110 (D. C. S. Car. 1889), the Court said:

> ". . . . The extent of these rights, that is to say, how much of the sea they cover, has been uncertain. Some nations claim a marine league; others more, even up to thirty leagues. Perhaps the best way of stating it is that every nation has the right to control so much of the seas adjacent to its shores as is necessary for all purposes of revenue or of defence."

The Supreme Judicial Court of Massachusetts in 1890 wrote:

> "It has often been a matter of controversy how far a nation has a right to control the fisheries on its sea-coast, and in the bays and arms of the sea within its territory; but the limits of this right have never been placed at less than a marine league from the coast on the open sea; . . . . More extensive rights in these respects have been and are now claimed by some nations; but, so far as we are aware, all nations concede to each other the right to control the fisheries within a marine league of the coast, ..." *Commonwealth v. Manchester*, 152 Mass. 230 at 236; 25 N.E. 113 at 114 (1890).

This Court itself, in 1891, agreed:

> "We think it must be regarded as established that, as between nations, the minimum limit of the territorial jurisdiction of a nation over tide waters is a marine league from its coast; . . . ." *Manchester v. Massachusetts*, 139 U. S. 240, 258.

Interpretation in context of the materials dealing with the one-sea-league or cannon-shot neutrality zone prevents acceptance of the Government's present thesis that they formed the foundation of an unalterable policy of any sort. To the contrary, they establish beyond peradventure that the United States had established only a tentative policy for a particular purpose in response to immediate pressures, and had accompanied even this with ample reservations of its right to make broader claims in the future, or for other purposes, or to meet changed conditions. All the Gulf States came into the Union during this period.

(b) The Canadian fisheries area presented special problems which were dealt with separately.

From the earliest times our citizens enjoyed extensive fishing rights off Nova Scotia and in the Gulf of St. Lawrence. Much of the fishing was done close to shore and the shore itself was used to dry and salt the fish. It was to the interest of the United States to restrict as narrowly as possible territorial claims by British inhabitants of these areas, despite any general views of the United States concerning jurisdiction on other coasts or for other purposes. So the instructions dated August 14, 1779, to the American representatives for a treaty of commerce with Great Britain read in part as follows:

> ". . . .You are, therefore, not to consent to any treaty of commerce with Great Britain without an explicit stipulation on her part not

> to molest or disturb the inhabitants of the United States of America in taking fish on the banks of Newfoundland and any other fisheries in the American seas anywhere except *within the distance of three leagues* of the shores of the territories remaining to Great Britain at the close of the war, *if a nearer distance cannot be obtained by negotiation.* And in the negotiation you are to exert your most strenuous endeavors to obtain a nearer distance to the Gulf of St. Lawrence, and particularly along the shores of Nova Scotia, ..." 3 Wharton, *The Revolutionary Diplomatic Correspondence of the United States* 302 (House Misc. Document No. 603, 50th Cong., 1st Sess. 1889).

A report of a Congressional Committee, dated January 8, 1782, alluding to these instructions, said in part:

> ". . . They are also instructed to observe . . . . that it does not extend to any parts of the sea lying within *three leagues* of the shores held by Great Britain or any other nation. That under this limitation, it is conceived by Congress, a common right of taking fish can not be denied to them without a manifest violation of the freedom of the seas, as established by the law of nations, and the dictates of reason; . . . ." 23 *Journals of the Continental Congress* 477 (Library of Congress Edition, 1914).

On November 25, 1782, the British representative delivered to the American commissioners a proposed draft of the treaty granting to United States citizens fishing rights and the privilege of using the shore

". . . . on condition that the citizens of the said United States do not exercise the fishery, *but at a distance of three leagues from all the coasts belonging to Great Britain*, as well as those of the continent as those of the islands situated in the Gulf of St. Lawrence." 6 *id.* at 75.

In the treaty as finally concluded on September 3, 1783 (8 Stat. 58), the United States was successful in obtaining the rights of fishing and the use of the coast without even a one-sea-league limitation. But the fact that the United States was entirely prepared, throughout the negotiations, to accept a three-league-limit, if a more favorable one could not be obtained by agreement, is strong evidence in favor of the three-league rule as a legal and generally accepted one, and that there was then no fixed three-mile Executive policy.

The fishery dispute itself continued for many years and re-opened when the British gave notice in August, 1814, that they considered the privileges granted by the 1783 treaty to have been terminated by the War of 1812. 1 *British and Foreign State Papers.* (Pt. II) at 1585. Having obtained unlimited fishing rights in 1783, it was only after hard bargaining that the United States agreed in the Treaty of Ghent of 1818 to relinquish those rights within three marine miles of the inhabited parts of the coast, and within the bays of Nova Scotia. (8 Stat. 248). The dispute continued over the definition of "bays." See Speech of Mr. Hamlin of Maine in the House of Representa-

tives, August 3 and 5, 1852, appendix to Cong. Globe, 32nd Cong., 1st Sess. 898-902. But statements made in connection with this later dispute have little bearing on the extent of the territorial sea in the Gulf of Mexico, where the United States had no such long-standing fishing interests, or special agreements.

(c) Three-league limits were recognized and used with respect to the annexation of Texas and the Treaty of Guadalupe Hidalgo.

The recognition of the three-league boundary of the Texas republic, and the later express utilization of that boundary in the Treaty of Guadalupe-Hidalgo, are circumstances which must be considered in any appraisal of executive foreign policy concerning the extent of the territorial sea. They are mentioned here for that reason, but because these events are considered in deatil in the separate Texas brief, reference is made to that brief for a full discussion, as well as to the discussion in this brief under Part II, B, 2. *supra*, 92-107.

(d) Executive policy from 1855 to 1890 shows lack of uniform adherence to a maximum territorial limit of three miles.

The Submerged Lands Act applies both a boundary which existed at the time a State became a member of the Union or one approved by Congress. The approval by Congress of the 1868 Florida Constitution would settle the matter as to that State regardless of developments in international law, or changes

in State Department attitudes, in the interim between 1845, the date the last of the Gulf States was admitted, and 1868. However, unless the Government is contending that the three-mile principle is so universally accepted in international law and the practice of the United States that Congressional *approval* of a Gulf coast State boundary beyond that limit would be void, examination of the development of international law need not be carried beyond the year 1845. Professor Riesenfeld concludes in his memorandum that questions of international law are pertinent, if at all, only insofar as *historical* boundaries are concerned. As to these he states:

> "On the critical dates between 1811 and 1845 there was no general consent among the maritime powers as to a limitation of territorial waters to one league; on the contrary, there existed respectable authority, evidenced by diplomatic correspondence and statements by authoritative text writers, expressly sanctioning a three-league limit." Exhibit II, p. 223.

If the Solicitor General really means to take this most extreme possible position in attempting to disable Congress from approving any boundary in the Gulf beyond three miles, then consideration must be given to the cited statements of Secretaries of State Marcy, Seward, Evarts, Fish, and Bayard in the period between 1855 and 1883, upon which the Government relies. But the complete picture is again far different from that which the extracts out of context appear to create.

The concept of the Florida and Bahama Straits as narrow "thoroughfares of commerce" dominated the exchange of notes with Spain in 1855 over the limits of Cuba.[81] The idea was the same as that expressed by Chief Justice Marshall earlier in *Church v. Hubbart*:

> "Thus in the channel, where a very great part of the Commerce to and from all the north of Europe, passes through a very narrow sea, the seizure of vessels on suspicion of attempting an illicit trade, must necessarily be restricted to very narrow limits, ..." 2 Cranch 187, 235.

Nowhere in this 1855 correspondence does the State Department contend that a three-mile rule has received *universal* acceptance.

When in 1862 Secretary Seward wrote Spain on the same subject, he expressly did not contend "that all nations have accepted or acquiesced and bound themselves to abide by this [three-mile] rule when applied to themselves."[82] He admitted that the United States "have a temporary interest (during the present insurrection) to maintain a broad freedom of the seas, so as to render their naval operations as effective as may be consistent with the law of na-

---

[81] 11 Manning. *Diplomatic Correspondence of the United States, Inter-American Affairs, 1831-1860*, 214, 216-17 (Washington, 1939).

[82] Note to Mr. Tassara, Spanish Minister, December 16, 1862; 1 Moore, *Digest of International Law* at 707.

tions.'"[4] Even then, the State Department representatives were ready to depart from that policy whenever it was to the interest of the United States to do so. In complaining to the Cape Town authorities over the capture of the *Sea Bride* by the *Alabama*, Mr. Graham, the United States consul, wrote on Apr. 5, 1863:

> "I believe there is no law defining the word 'coast', other than international law. That law has always limited neutral waters to the fighting distance from land, which, upon the invention of gunpowder, was extended to the distance of three nautical miles from land on a straight coast, and, by the same rule, since the invention of Armstrong rifled cannon, *to at least six miles.*" H. R. Exec. Doc. No. 1, 42nd Cong., 3rd Sess., Vol. 4, pt. II, p. 468 (1873), Cong. Series 1556.

After receiving a British reply that the capture had been made outside territorial waters, Mr. Graham replied in part:

> ". . . . If your decision is that the neutral waters of this colony only extend a distance of three miles from land, the character of that decision would have been aptly illustrated to the people of Cape Town had an American war-

[4] *Id.* at 708. Shortly afterwards, Seward admitted to the American Minister to Spain "The United States, under ordinary circumstances, could not, so far as I am able to judge, have any special interest in denying to Spain the claim she makes of a maritime jurisdiction exceeding three miles around the island of Cuba, or elsewhere." Letter dated August 14, 1863, Seward to Perry, *Papers Relating to Foreign Affairs Accompanying the Annual Message of the President to the First Session of the 38th Congress*, Part 2, at 983 (Washington, 1864), Cong. Series 1181.

vessel appeared on the scene and engaged the Alabama in battle. In such a contest, with cannon carrying a distance of six miles (three over land), the crashing buildings in Cape Town would have been an excellent comementary on your decision." H. R. Exec. Doc. No. 1, 42nd Cong., 3rd Sess., Vol. 4, pt. II, p. 469 (1873), Cong. Series 1556.

In May, 1883, a boundary treaty between Mexico and Guatemala which utilized a beginning point three leagues from land was received in the State Department Not only was no objection made concerning it, but the Department expressed its pleasure at the settlement of the boundary.[65]

While Secretary Bayard argued in May, 1886, that the three-mile fishery rule in effect on the northeastern coast of the United States should be uniformly followed on the coast of Alaska,[66] the Secretary of the Treasury, acting under Congressional and Presidental authority, ignored his suggestion.[67] Be-

---

[65] H. R. Exec. Doc. No. 1, Pt. 1, 48th Cong., 1st Sess., p. 652 (1883), Cong. Series 2181.

[66] Letter to Secretary of the Treasury, May 28, 1886, 1 Moore, *Digest of International Law* 718-721.

[67] Act of July 27, 1868, ch. 273, sec. 6, 15 Stat. 240, 241 codified as Section 1956, Revised Statutes of the United States, 1878, prohibited pelagic sealing "within the limits of Alaska territory or in the waters thereof." These limits as described in the Treaty of Cession from Russia, 15 Stat. 539-41 included approximately one-half of the Bering Sea with areas in excess of 400 miles from the nearest island. If Secretary Seward had believed that three miles was the maximum limit of territorial boundaries, as the Government now wishes the Court to believe, he would not have taken a conveyance to a broad area of sea in which the United States acquired no rights.

ginning at least as early as August, 1886, seizures of British ships were made as far as 115 miles offshore,[9] and a seizure 59 miles from land was upheld by this Court on the basis of assertions by the State Department that the Bering Sea area was within the jurisdiction of the United States. *In re Cooper*, 138 U. S. 404, 409, (1887). In the resulting dispute with Great Britain, Secretary of State Blaine explained that Secretary Adams' objections in 1822 to the 100-mile Russian ukase related solely to Russian territory in the main Pacific Ocean; that this nation did not object to full Russian reservation of fishing rights for its citizens over the entire Bering Sea; that the United States acquired half of that sea by cession from Russa and therefore had full rights within that area to protect its property-interest in its sea herd.[10] When the case came to be argued before the Arbitral Tribunal in 1893, counsel for the United States chose to recede from Blaine's position and contend for a property right in the seal herd itself permitting its protection as distinguished from any dominion

---

[9] The Pribilof Islands, the home of the Alaskan seal herd, lie more than 200 miles from the shore within the area so acquired. The Secretary of the Treasury instructed revenue vessels to enforce the statute within this vast area. See Letter dated April 21, 1886, in 1 *Proceedings of the Tribunal of Arbitration, Fur Seal Arbitration* 82 (Washington, 1895).

[10] See table of seizures of British Ships, August 1, 1886, to March 27, 1896, *ibid* at 83.

[11] Letter to Sir Julian Pauncefote, British Minister, June 30, 1890, 2 *id*, at 224.

over the sea beyond three miles."[70] The tribunal denied any right of regulation beyond three miles."[71] This event, culminating a period of development beginning with Jefferson's minimum neutrality announcement, occurred 25 years after Florida's three-league boundary was approved by Congress, and 81, 76, 74 and 48 years, respectively, after the Gulf Coast States were admitted to the Union. Under the tests fixed by the Congress in the Submerged Lands Act, this 1893 decision cannot affect the status of the Gulf coast state boundaries here under consideration.

All of the foregoing aspects of the activities of the State Department are either ignored or glossed over in Secretary Dulles' letter. Even though the letter was written at the request, and for the benefit, of the Solicitor General, the Secretary of State discussed only the extent of territorial waters—not boundary location—and, moreover was very careful not to say that any firm stand of strict adherence to a maximum three-mile limit of territorial waters had been taken by the State Department before the year 1862. He then fails, of course, to mention a substantial part of the record of the Department from that date to 1893 bearing on the Solicitor General's contention. The true attitude of the State Department cannot be assessed accurately on the basis of only a part of its history.

---

[70] Final Report of the Agent of the United States, 1 *id.* at 9.

[71] Award of the Tribunal of Arbritration, 1 *id.* at 77-78.

In summary, the one sea-league—three-mile limit of territorial waters was, during the relevant period, 1812-1868, regarded as the minimum distance approved by international law to be departed from or insisted upon as the interests of the United States appeared. The concept was utilized to protect fishing interests off the Canadian east coast and in order to give Federal cruisers the widest range in capturing Confederate blockade-runners during the Civil War. At other times it did not deter the Congress from fixing a four-league search area for smuggling purposes, or the Executive from exercising jurisdiction 115 miles from land in the Bering Sea. The concept was not even mentioned during the entire history of United States relations with the Republic of Texas or when the Florida Constitution of 1868 was debated in the Congress. The State Department negotiated treaties with Mexico containing a three-league Gulfward boundary, and failed to raise objection to a Mexico-Guatemala boundary of three leagues in the Pacific. As to the Gulf its practice was uniform as late at least as 1911. Such course of conduct cannot be interpreted as a consistent assertion even by the Executive Branch of the Government during the period embracing the relevant dates that three miles was an absolute maximum limit imposed by a positive rule of international law. The Solicitor General's argument based on this premise is therefore without merit.

C. In any event, Congress has the power to recognize and adopt the coastal boundaries of the States, despite conflicting theories of international law or prior practice; and Congress in the Submerged Lands Act exercised that power in favor of the contention here made by the Gulf States.

1. International law is not the measure of the domestic power of Congress.

Government counsel's contention (Brief p. 27-147) that no Gulf State could have a boundary located more than three geographical miles from its coast because of international law amounts to saying that international law limits the power of Congress to adopt or accept the historic boundaries of the Gulf Coastal States. The Government's argument is that the Act of the Republic of Texas fixing its seaward boundaries was "not effective as against other nations," (Government's Brief, p. 18) during the lifetime of that Republic and therefore the boundary "never had any validity under international law and the law of the United States" (Government's Brief, p. 104). This contention, when considered with the statement (Government's Brief p. 106) "That three miles is the maximum permissible extent of a nation's boundary into the sea," would in effect deny to Congress the power to locate a national maritime boundary beyond three miles from the coast. Such a contention is contrary to the settled law that Congress can legislate in matters affecting the Nation and the States despite any conflicting rules of inter-

national law and in doing so Congress can and does determine the foreign and domestic policy of the United States.

International law is a part of the law of the United States only on questions of international rights and duties." Futhermore, Congress is not obligated to adopt all the principles of international policy that may be acceptable to the family of nations in general. As stated by the Court of Appeals of the Ninth Circuit in *United States v. Siem*, 299 Fed 582 at 583:

> "International law is not in itself binding upon Congress, and treaties stand upon no higher plane than statutes of the United States,"

This Court recently said in *Lauritzen v. Larsen*, 345 U. S. 571 at 578:

> " 'The law of the sea,' we have had occasion to observe, 'is in a peculiar sense an international law, but application of its specific rules depends upon acceptance by the United States,' Farrell v. United States, 336 U. S. 511, 517."

If Congress is not bound by principles of international law, it is certainly not bound by unilateral declarations of the Secretary of State as to the content and development of international law.

---

[11] Skiriotes v. Florida, 313 U. S. 69; Hilton v. Guyote, 159 U. S. 113.

2. The power of Congress to determine national boundaries is superior to that of the Executive.

The position of the Solicitor General seems to be that the Executive has paramount, if not exclusive, power to determine the territorial extent of the United States for all purposes, and in particular for the purpose of granting property rights. The cases, however, do not sustain this view.[73] The fixing of State boundaries and the fixing of the National boundary are peculiarly the province of Congress, and such a function does not belong to the Secretary of State.[74] Whatever the policy of the Executive may be on this subject that policy is subject to the approval or disapproval of the law-making body.

When the President's decision has been held controlling, it was made in furtherance of some congressionally-approved treaty or act and there was no question of a confict of executive with legislative authority. The superiority of the legislative will is plainest in the field of treaties, which are normally thought of as the product of the executive, for, as Mr. Justice Black said in *Reid v. Covert*, 354 U. S. 1 at 18: "This Court has also repeatedly taken the position that an Act of Congress, which must comply with the Constitution, is on a full parity with a treaty, and that when a statute which is subsequent

---

[73] Alvarez y. Sanches v. United States, 216 U. S. 167; Stephens v. Cherokee Nation, 174 U. S. 445; Whitney v. Robertson, 124 U. S. 190; Horner v. United States, 143 U. S. 570; Fong Yue Ting v. United States, 149 U. S. 698; Moser v. United States, 341 U. S. 41, 45; Rainey v. United States, 232 U. S. 310, 316; Ex parte Webb, 225 U. S. 663, 683.

[74] U. S. Constitution, Article IV, Section 3.

in time is inconsistent with a treaty, the statute to the extent of the conflict renders the treaty null.'[75]"

Congress has the ultimate power under the Constitution to decide how far into the ocean the United States will assert a property right in the subsurface land; how, and through what governmental machinery, to develop that land; and, under our dual sovereignty, to what distance the States may exercise property rights granted to them by Congress

The earliest case touching the question of the power to fix boundaries appears to be *Foster v. Neilson*, 2 Pet. 253, which involves the validity of a land grant in the territory between the Iberville and Perdido Rivers. The case turned on the question of whether the boundary of the United States stopped at the Iberville River or extended east to the Perdido at the time of the grant. The Court held that it was bound to follow the decision of "the Legislature" as to this matter, Chief Justice Marshall stating as follows:

> "The judiciary is not that department of the government to which the assertion of its interests against foreign powers is confided; and its

---

[75] "In *Whitney v. Robertson*, 124 U. S. 190, the Court stated, at p. 194: 'By the Constitution a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. . . . [I]f the two are inconsistent, the one last in date will control the other. . . .' *Head Money Case*, 122 U. S. 580; *Botiller v. Dominguez*, 130 U. S. 238; *Chae Chan Ping v. United States*, 130 U. S. 581. See Clark v. Allen, 331 U. S. 503, 509-510; Moser v. United States, 341 U. S. 41, 45." [footnote per Mr. Justice Black.]

duty commonly is to decide upon individual rights, according to those principles which the *political departments* of the nation have established. If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous.

"We think then, however individual judges might construe the treaty of St. Ildefonso, it is the province of the court to conform its decisions to the will of the *Legislature*, if that will has been clearly expressed." 2 Pet. at 307.

As to the effect of the various acts of Congress by which authority over the disputed territory was asserted, Chief Justice Marshall stated:

"If those *departments* which are entrusted with the foreign intercourse of the nation, which assert and maintain its interests against foreign powers, have unequivocally asserted its rights of dominion over a country of which it is in possession, and which it claims under a treaty; if the *Legislature* has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied. A question like this respecting the boundaries of nations is, as has been truly said, more a political than a legal question; and in its discussion, the courts of every country must respect the pronounced will of the *Legislature*. . . ." 2 Pet. at 309

Foster v. Neilson was followed in *Garcia v. Lee*, 12 Pet. 511, where Chief Justice Taney first stated the holding in *Foster v. Neilson* as follows:

". . . This court then decided that the question of boundary between the United States and

Spain was a question for the political departments of the government; that the Legislative and executive branches having decided the question, the courts of the United States were bound to regard the boundary determined on by them as the true one.

". . . .

"After having thus fully expressed the opinion that the court were bound to recognize the boundary of Louisiana, as insisted on by the *Legislature* of the United States; and that the American grants of land must prevail over those made by the Spanish authorities, after the date of the Treaty of St. Ildefonso, unless 'the rights of the parties had been changed by subsequent arrangements made between the two governments'; the court, in the same case proceeded to examine whether the validity of these grants were recognized by the United States, or provided for in the Treaty of 1819." 12 Pet. at 518.

Jones v. United States, 137 U. S. 202, is cited for the proposition that the Executive has the power to determine the territory of the United States. However, the case actually involved the exercise by the State Department of a power which was conferred on it by an act of Congress relating to the Guano Islands, to determine whether there was sufficient evidence of discovery, possession, and occupation so that the island should be considered as appertaining to the United States. The Court held that the State Department's decision, made pursuant to the statute, was binding on the Court, but it should be noted that the action of the Executive was simply a means of carrying out the law as determined by *Congress*.

The general rule as to the territorial extent of the United States was stated by the Court as follows:

> "All courts of justice are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government whose laws they administer, or of its recognition or denial of the sovereignty of a foreign power, as appearing from the public acts of *the legislature and executive*, although those acts are not formally put in evidence, nor in accord with the pleadings." 137 U. S. at 214.

In *Pearcy v. Stranahan*, 205 U. S. 257, the question was whether the Isle of Pines was part of the territory of the United States or of Cuba. The Court held that the determination of this question was governed by the decision of the "political departments" as to the meaning of the treaty with Spain terminating the Spanish-American War:

> "This inquiry involves the interpretation which the *political departments* have put upon the treaty. For, in the language of Mr. Justice Gray, in Jones v. United States, 'who is the sovereign, *de jure* or *de facto*, of a territory, is not a judicial but a political question, the determination of which by *the legislative and executive departments* of any government conclusively binds the judges as well as all other officers, citizens, and subjects of that government.'" 205 U. S. at 265.

From the foregoing decisions it follows that the determination of the territorial extent of the various aspects of sovereignty of the United States into

the sea is a matter which is ordinarily determined by the action of the "political branches" of the government, and that ultimately Congress has the power to make the decision. This is clearly true where, as here, a grant of national property is at issue. In this situation the act of the Congress is binding upon both the Executive and the Judiciary, because Article IV, Section 3, Clause 1 of the Constitution specifically gives Congress the power to dispose of property belonging to the United States.

There is nothing in the Constitution that indicates that the President (or the Secretary of State) can fix a boundary without congressional authority. Much less is there any authority for an executive officer to change or withdraw boundaries once fixed, or to take away from the states by a "foreign policy" determination territory which has once been included within their limits.

3. If Congress intended a national maritime boundary to be the limit of the area of submerged lands in which the rights of the States may be exercised, as plaintiff here contends, that boundary for purposes of the Submerged Lands Act must necessarily be at least three leagues from coast in the Gulf of Mexico

The Submerged Lands Act approves and confirms the seaward boundary of each original coastal State as a line three geographical miles distant from the

coast, or, in the case of the Great Lakes, to the international boundary. It permits other States that have not already done so, to extend their seaward boundaries to the same extent, with this proviso:

> "Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary *beyond three geographical miles* if it was so provided by its constitution or laws prior to or at the time such State became a member of the of the Union, or if it has been heretofore approved by Congress."

When this section is read in connection with the definition of "boundaries" contained in Section 2(b), 43 U. S. C. 1301, it is plainly evident that Congress recognized a State boundary beyond three miles in the Gulf of Mexico if such a boundary was fixed in the State's constitution or laws prior to, or at the time of the State's admission to the Union, or if such a boundary has been subsequently approved by Congress.

The Government argues that all of the language in the Act relative to three leagues is a delusion, saying that it *does not* stand for a measurement of a grant of rights and *cannot stand* as an adoption of boundary, because the Government says the national boundary is limited to three miles from the coast.

The Government's argument, whether stated thus briefly, or elaborated with innumerable quotations, amounts to having Congress make a hollow promise.

It supposes that the senators and representatives of the Gulf Coast States fought with determination for an opportunity to have the benefit of historic boundaries out to three leagues from coast; that the opportunity seemed to have been granted but was not; that the President acted in the belief that the boundary could be three leagues from coast into the Gulf of Mexico, but it could not; that the Congress, at the very least, gave the States an opportunity to show their historic boundaries but that as a matter of law this Court would have to say that the States could not make that proof. This is not the normal function of legislative and judicial action.

> "Our duty is to give coherence to what Congress has done within the bounds imposed by a fair reading of legislation. . . ." *Sam Achilli v. United States*, 353 U. S. 373 at 379.
>
> ". . . Every statute must be interpreted in the light of reason and common understanding to reach the results intended by the legislature. Cf. Holy Trinity Church v. United States, 143 U. S. 457; American Security & Trust Co. v. Commissioners, 224 U. S. 491. That principle would be violated if we attributed to Congress acceptance of the results that would occur here from the position argued by petitioner." *Rathbun v. United States*, 355 U. S. 107 at 109.

Irrespective of the policy of the State Department, and despite any rule of international law, Congress recognized and adopted these boundaries to the extent that it transferred rights to the States out to

three leagues from the coast in the Gulf of Mexico. The words of the Act are susceptible to no other interpretation. The policy of the United States should be determined from the statute—not from Secretary Dulles' letter, or any other statement by various government officials (Cf. pages 59 to 103, inclusive, of the Government's brief). As this Court said in *Dewey v. United States*, 178 U. S. 510 at 521:

> "Our province is to declare what the law is, and not, under the guise of interpretation or under the influence of what may be surmised to be the policy of the government, so to depart from sound rules of construction as in effect to adjudge that to be law which Congress has not enacted as such. Here the language used by Congress is unambiguous. It is so clear that the mind at once recognizes the intent of Congress. Interpreted according to the natural import of the words used, the statute involves no absurdity or contradiction, and there is consequently no room for construction. Our duty is to give effect to the will of Congress as thus plainly expressed. United States v. Fisher, 2 Cranch 358, 399; Lake County v. Rollins, 130 U. S. 663." [16]

The cases cited above make it clear that the Court should apply the rules laid down by Congress irrespective of consequences. This simply means the Government counsel's argument is one that should have been, as it was in fact, addressed to Congress. Congress rejected that argument, deciding that the States

---

[16] See also Jay v. Boyd, 351 U. S. 345 at 357; Galvan v. Press, 347 U. S. 522 at 528; United States v. First National Bank, 234 U. S. 245 at 260.

should have rights out to three leagues from the coast in the Gulf of Mexico. If this policy decision by Congress can be given effect only by construing it to mean that for the purpose of this Act national territory has been located by Congress at three leagues in the Gulf, then the Act should be given that construction.

On this specific point the co-author of the bill and acting chariman of the Senate Interior Committee, who reported the bill to the floor placed in the *Congressional Record* a documented statement showing "the true intent and effect of Senate Joint Resolution 13." This statement said:

> "In collaboration with other co-authors of the resolution and with members of the Committee on Interior and Insular Affairs, I have prepared a detailed statement showing that the true intent and effect of Senate Joint Resolution 13 are to establish a policy which is clearly within the authority of the Congress of the United States. In order that every Member of the Senate may have an opportunity to consider this statement prior to a final vote on the passage of the resolution, I ask unanimous consent that it be inserted in the *Record* at this point in my remarks.
>
> "There being no objection, the statement was ordered to be printed in the *Record*, as follows: . . .
>
> "Therefore, regardless of how the marginal belt and its lands and resources were acquired in the first instance, they are now a part of the territory of the United States the same as its land territory, and the Constitution and do-

mestic laws are applicable as between the Federal Government and the States or individual citizens. . . .

"If any doubt remains on this question of whether that part of the marginal belt included within the definition of 'lands beneath navigable waters' in Senate Joint Resolution 13 is a part of the territory of the United States and subject to the authority of the Congress, the doubt will be removed by the terms of this joint resolution. No one will question the right of the Congress to declare the territorial extent of the jurisdiction of our Nation. By its definition of 'lands beneath navigable waters' Senate Joint Resolution 13 recognizes that the area within the 3-mile limit or within such greater distance as a State's seaward boundary existed 'in the Gulf of Mexico or any of the Great Lakes at the time such State became a member of the Union, or as heretofore approved by the Congress' is within the territory of the States and the United States. This assertion of congressional policy will confirm the fact that such area is within the jurisdiction of the United States, and therefor it is subject to legislation by the Congress." 99 Cong. Rec., 4382, 4384, 4385.

The Submerged Lands Act, enacted with the approval of the President, was intended to settle this policy matter and that settlement should be allowed to stand. The plain purposes of Congress should not be thwarted because other solutions or alternative means of settling these matters were available.

No further argument is needed to show that the Congress *can* dispose of national property and property rights. *Alabama v. Texas*, 347 U. S. 272.

No further argument is needed that Congress and the President have made it clear that no one but the United States, or the several States which compose it, can take the minerals from our continental shelf, and so this remains a domestic matter concerned only with the disposition of national and States' claims. As Senator Cordon further stated:

> "As shown by the evidence furnished by the State Department and by the Presidential Proclamation and Executive order of September 28, 1945, the vesting or establishment of these proprietary rights in the States is a matter of domestic concern and will not interfere with international law or present and future international agreements and obligations, so long as they are vested or established subordinate and subject to the constitutional governmental powers or the national sovereign. That is exactly what is intended to be accomplished by the terms of Senate Joint Resolution 13, . . . 99 Cong. Rec., 4385.

If this disposition must be made on the basis of territorial boundaries, then logic, sense and the proper application of recognized rules of statutory construction require that the Act itself be considered as declaring the extent of national territory.

> "The purpose of Congress is a dominant factor in determining meaning. There is no better key to a difficult problem of statutory construction than the law from which the challenged statute emerged. Remedial laws are to be interpreted in the light of previous experience and prior enactments. Nor, where doubt exists,

should we disregard informed congressional discussions." *United States v. Congress of Industrial Organizations*, 335 U. S. 160 at 112.

"* * * The statute cannot be divorced from the circumstances existing at the time it was passed, and from the evil which Congress sought to correct and prevent. The circumstances and evil are well known. * * *" *United States v. Champlin Refining Co.*, 341 U. S. 290.

If no State territorial boundary may exist outside a national boundary and if the Congress has approved State boundaries extending beyond three miles, then it necessarily follows that Congress approved a national boundary for the purposes of the Submerged Lands Act in fixing historic State boundaries as the measure of the grant.

All that is needed to support so simple and reasonable a proposition is to construe the Submerged Lands Act so that it will have the effect intended by the Congress.

Furthermore, it is beyond dispute that the United States now has a national boundary in the Gulf of Mexico three leagues from coast as established by the Treaty of Guadalupe Hidalgo.

Conclusion

The defendant States in their separate briefs will pray for relief in conformity with their respective answers.

Respectfully submitted,

JACK P. F. GREMILLION
Attorney General
State Capitol
Baton Rouge, Louisiana

Of Counsel:

HUGH M. WILKINSON
MORRIS WRIGHT
JAMES R. FULLER
MARC DUPUY, JR.
FRANK B. ELLIS

W. SCOTT WILKINSON
Special Assistant Attorney General
17th Floor Beck Building
Shreveport, Louisiana

VICTOR A. SACHSE
Special Assistant Attorney General
620 Commerce Building
Baton Rouge, Louisiana

EDWARD M. CARMOUCHE
Special Assistant Attorney General
Kirby Building
Lake Charles, Louisiana

JOHN L. MADDEN
Special Assistant Attorney General
Capitol Building
Baton Rouge, Louisiana

BAILEY WALSH
Special Counsel
1025 Connecticut Avenue, N. W.
Washington, D. C.

Attorneys for the State of Louisiana

Of Counsel:

JAMES P. HART
Brown Building
Austin, Texas

J. CHRYS DOUGHERTY
Capital National Bank Building
Austin, Texas

WILL WILSON
Attorney General, State of Texas

JAMES N. LUDLUM
First Assistant Attorney General

JAMES H. ROGERS
Assistant Attorney General
Capitol Station
Austin, Texas

Attorneys for the State of Texas

JOE T. PATTERSON
Attorney General
New Capitol Building
Jackson, Mississippi

JOHN H. PRICE, JR.
Assistant Attorney General
New Capitol Building
Jackson, Mississippi

Attorneys for the State of Mississippi

JOHN PATTERSON
Attorney General
Judicial Building
Montgomery, Alabama

WILLIAM G. O'REAR
Assistant Attorney General
711 High Street
Montgomery, Alabama

GORDON MADISON
Assistant Attorney General
Judicial Building
Montgomery, Alabama

E. K. HANBY
Special Assistant Attorney General
403 Noojin
Gadsden, Alabama

Attorneys for the State of Alabama

RICHARD W. ERVIN
Attorney General

J. R. McCLURE
First Assistant Attorney General

FRED M. BURNS
Assistant Attorney General

ROBERT J. KELLY
Special Assistant Attorney General
Capitol Building
Tallahassee, Florida

Attorneys for the State of Florida

Of Counsel:

E. C. BOSWELL
Geneva, Alabama
Legal Advisor to
James E. Folsom
Governor of Alabama

NEIL METCALF
Geneva, Alabama
Representing
James E. Folsom
Governor of Alabama

Of Counsel:

SPESSARD L. HOLLAND
United States Senator
Washington, D. C.

GUY CORDON
1625 Eye St., N. W.
Washington, D. C.

August 15, 1958